रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. No. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
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सं. 24] नई दिल्ली, जून 11—जून 17, 2017, शनिवार/ ज्येष्ठ 21—ज्येष्ठ 27, 1939
No. 24] NEW DELHI, JUNE 11—JUNE 17, 2017, SATURDAY/ JYAISTHA 21—JYAISTHA 27, 1939

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 11 मई, 2017

का.आ. 1413.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा (3) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री अतीश सिंह के स्थान पर, सुश्री वंदिता कौल, संयुक्त सचिव, वित्तीय सेवाएं विभाग को तत्काल प्रभाव से और अगले आदेशों तक, बैंक ऑफ महाराष्ट्र के निदेशक मण्डल में सरकारी नामिती निदेशक नामित करती है।

[फा.सं. 6/3/2012-बीओ-I]

ज्ञानोतोष राय, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 11th May, 2017

S.O. 1413.—In exercise of the powers conferred by clause (b) of Sub-Section (3) of Section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980, read with sub-clause (1) of clause 3 of The Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the

Central Government, hereby nominates Ms. Vandita Kaul, Joint Secretary, Department of Financial Services, as Government Nominee Director on the Board of Directors of Bank of Maharashtra with immediate effect and until further orders vice Shri Ateesh Singh.

[F.No. 6/3/2012-BO-I]

JNANATOSH ROY, Under Secy.

शुद्धि-पत्र

नई दिल्ली, 31 मई, 2017

का.आ. 1414.—इस विभाग की अधिसूचना संख्या 4/4(7)/2017-बीओ-I, दिनांक 5.5.2017, जिसमें बैंक ऑफ इंडिया के प्रबंध निदेशक एवं मुख्य कार्यकारी अधिकारी श्री मेलवीन ओसवाल्ड रेगो को सिंडिकेट बैंक में प्रबंध निदेशक एवं मुख्य कार्यकारी अधिकारी नियुक्त किया गया था, में आंशिक संशोधन करते हुए

"केन्द्रीय सरकार, एतद्वारा, बैंक ऑफ इंडिया के प्रबंध निदेशक एवं मुख्य कार्यकारी अधिकारी श्री मेलवीन ओसवाल्ड रेगो (जन्म तिथि 19.07.1959) को दिनांक 01.07.2017 से 13.08.2018 तक की उनकी शेष कार्यावधि तक सिंडिकेट बैंक में प्रबंध निदेशक एवं मुख्य कार्यकारी अधिकारी के पद पर नियुक्त करती है। श्री रेगो दिनांक 30.06.2017 तक अनिवार्य प्रतीक्षा में रहेंगे।" **शब्दों के स्थान पर**

निम्नलिखित शब्दों को प्रतिस्थापित किया जाएगा :

"केन्द्रीय सरकार, एतद्वारा, बैंक ऑफ इंडिया के प्रबंध निदेशक एवं मुख्य कार्यकारी अधिकारी श्री मेलवीन ओसवाल्ड रेगो (जन्म तिथि 19.07.1959) को तत्काल प्रभाव से अर्थात दिनांक 05.05.2017 से और दिनांक 13.08.2018 तक की उनकी शेष कार्यावधि तक सिंडिकेट बैंक में प्रबंध निदेशक एवं मुख्य कार्यकारी अधिकारी के पद पर नियुक्त करती है। श्री रेगो दिनांक 30.06.2017 तक अनिवार्य प्रतीक्षा में रहेंगे।"

[फा. सं. 4/4/2017-बीओ-I]

ज्ञानोतोष राय, अवर सचिव

CORRIGENDUM

New Delhi, the 31st May, 2017

S.O. 1414.—In partial modification of this Department's Notification No.4/4(7)/2017-BO.I dated 05.05.2017 appointing Shri Melwyn Oswald Rego, MD&CEO, Bank of India as MD&CEO in Syndicate Bank, the following words **may be substituted**:

"the Central Government, hereby appoints Shri Melwyn Oswald Rego (DOB:19.07.1959), MD&CEO, Bank of India as MD&CEO in Syndicate Bank with immediate effect i.e. 05.05.2017 and till the remainder of his term upto 13.08.2018, including the compulsory wait period. Shri Melwyn Oswald Rego will be on compulsory wait till 30.06.2017."

instead of the following words:

"the Central Government, hereby appoints Shri Melwyn Oswald Rego (DOB:19.07.1959), MD&CEO, Bank of India as MD&CEO in Syndicate Bank with effect from 01.07.2017 and till the remainder of his term upto 13.08.2018. Shri Rego will continue to be on compulsory wait till 30.06.2017."

[F.No. 4/4/2017-BO.I]

JNANATOSH ROY, Under Secy.

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 5 जून, 2017

का.आ. 1415.—केन्द्र सरकार, एतद्द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राजस्थान राज्य सरकार, गृह (जीआर-V) विभाग,

जयपुर की अधिसूचना सं. एफ. 19(14)गृह-5/2017 दिनांक 30.03.2017 के माध्यम से प्राप्त सहमति से भारतीय दंड संहिता 1860 (1860 का अधिनियम सं. 45) की धारा 304-बी, 120-बी के अधीन पुलिस थाना झोटवाड़ा, जिला जयपुर पश्चिम में दर्ज एफआईआर सं. 675/2014 दिनांक 09.10.2014 की जांच करने तथा उक्त मामले से संबद्ध तथा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न प्रासंगिक अन्य मामले की जांच करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का समस्त राजस्थान राज्य में सहर्ष विस्तार करती है।

[फा. सं. 228/16/2017-एवीडी-II]

एस. पी. आर. त्रिपाठी, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 5th June, 2017

S.O. 1415.—In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Rajasthan, Home (Gr.-V) Department, Jaipur vide Notification No. F. 19(14) Home-5/2017 dated 30.03.2017 is pleased to accord consent to the extersion of the powers and jurisdiction of the members of the Delhi Special Police Establishment in the whole of the State of Rajasthan for the investigation of FIR No. 675/2014 dated 09.10.2014 under sections 304-B, 120-B of the Indian Panel Code, 1860 (Act No. 45 of 1860) registered at Police Station Jhotwara, District Jaipur West or any other offences committed in the course of the same transaction arising out of the said case.

[F. No. 228/16/2017-AVD-II]

S. P. R. TRIPATHI, Under Secy.

स्वास्थ्य और परिवार कल्याण मंत्रालय

(स्वास्थ्य और परिवार कल्याण विभाग)

नई दिल्ली, 12 जून, 2017

का.आ. 1416.—जबकि भारतीय चिकित्सा परिषद (संशोधन) अध्यादेश, 2013 की धारा 3क की उप धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, 05 नवंबर, 2013 को भारतीय चिकित्सा परिषद का पुनर्गठन किया गया था;

और जबकि भारतीय चिकित्सा परिषद अधिनियम, 1956 (1956 का 102) की धारा 3 की उप धारा (1) के खंड (ग) के अनुसरण में केंद्रीय सरकार द्वारा पंजीकृत चिकित्सा स्नातक निर्वाचन क्षेत्र में चुनाव कराया गया है तथा निम्नलिखित को अधिसूचना जारी होने की तिथि से पांच वर्ष की अवधि के लिए भारतीय चिकित्सा परिषद का सदस्य निर्वाचित किया गया है ।

अत: अब उक्त अधिनियम की धारा 3 की उप धारा (1) के प्रावधानों के अनुसरण में केंद्रीय सरकार भारत सरकार की अधिसूचना में स्वास्थ्य मंत्रालय के दिनांक 09 जनवरी, 1960 के तत्कालीन का.आ. 138 में निम्नलिखित संशोधन करती है, अर्थात् :-

भारत सरकार की अधिसूचना में स्वास्थ्य और परिवार कल्याण मंत्रालय के दिनांक 06 नवंबर, 2013 के का.आ. सं. 3324 (अ) में अन्तिम प्रविष्टि तथा उससे संबंधित प्रविष्टि के पश्चात् निम्नलिखित को जोड़ा जाएगा, नामतः

क्र. सं.	पंजीकृत चिकित्सा स्नातक निर्वाचन क्षेत्र का नाम	निर्वाचित सदस्य का विवरण	निर्वाचन का तरीका
19	हिमाचल प्रदेश	डॉ. जीवा नन्द चौहान, खंड चिकित्सा अधिकारी, मुख्य चिकित्सा अधिकारी का कार्यालय, बिलासपुर, हिमाचल प्रदेश	निर्वाचित

[सं. वी-11013/04/2015-एमईपी]

डी. वी. के. राव, अवर सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health and Family Welfare)

New Delhi, the 12th June, 2017

S.O. 1416.—Whereas on 05th November, 2013, the Medical Council of India was re-constituted in exercise of the powers conferred by sub-section (1) of section 3A of the Indian Medical Council (Amendment) Ordinance, 2013;

And, whereas the Central Government, in pursuance of clause (c) of sub-section (1) of section 3 of the Indian Medical Council Act, 1956 (102 of 1956) has conducted the election from the Registered Medical Graduate Constituency and the following has been elected to be a member of the Medical Council of India for a period of five years with effect from the date of issue of this notification.

Now, therefore, in pursuance of the provision of sub-section (1) of Section 3 of the said Act, the Central Government hereby makes the following amendment in the Notification of the Government of India in the then Ministry of Health number S.O. 138 dated 9th January, 1960, namely:-

In the notification of the Government of India in the Ministry of Health & Family Welfare number S.O. 3324(E) dated 06th November, 2013, after the last entry and entry relating thereto, the following shall be inserted, namely:

S. No.	Name of the Registered Medical Graduate Constituency	Details of the Elected Member	Mode of Election
19.	Himachal Pradesh	Dr. Jiwa Nand Chauhan, Block Medical Officer, O/o the Chief Medical Officer, Bilaspur, HP.	Elected

[No. V-11013/04/2015-MEP]

D. V. K. RAO, Under Secy.

नई दिल्ली, 12 जून, 2017

का.आ. 1417.—जबकि भारतीय चिकित्सा परिषद (संशोधन) अध्यादेश, 2013 की धारा 3क की उप धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, 05 नवंबर, 2013 को भारतीय चिकित्सा परिषद का पुनर्गठन किया गया था;

और जबकि भारतीय चिकित्सा परिषद अधिनियम, 1956 (1956 का 102) की धारा 3 की उप धारा (1) के खंड (ख) के प्रावधानों के अनुसरण में 20.03.2015 से किंग जार्ज मेडिकल विश्वविद्यालय (केजीएमयू), लखनऊ का प्रतिनिधित्व कर रहे डॉ. रविकान्त को भारतीय चिकित्सा परिषद का सदस्य निर्वाचित किया गया था ।

और जबकि डॉ. रविकान्त ने एम्स, ऋषिकेश के निदेशक के रूप में कार्यभार ग्रहण कर लिया है तथा अब वह केजीएमयू, लखनऊ में चिकित्सा संकाय नहीं हैं अत भारतीय चिकित्सा परिषद अधिनियम, 1956 की धारा 7 (3) में निहित

प्रावधानों के अनुसरण में भारतीय चिकित्सा परिषद अधिनियम, 1956 की धारा 3 (1) (ख) के तहत केजीएमयू का प्रतिनिधित्व कर रहे डॉ. रविकान्त की भारतीय चिकित्सा परिषद की सदस्यता समाप्त कर दी गई है।

अत: अब 14.04.2017 से केजीएमयू का प्रतिनिधित्व कर रहे डॉ. रविकान्त की भारतीय चिकित्सा परिषद की सदस्यता को समाप्त माना जाएगा।

[सं. वी-11013/02/2016-एमईपी]

डी. वी. के. राव, अवर सचिव

New Delhi, the 12th June, 2017

S.O. 1417.—Whereas on 5th November, 2013, the Medical Council of India was re-constituted in exercise of the powers conferred by sub-section (1) of section 3A of the Indian Medical Council (Amendment) Ordinance, 2013;

And whereas in pursuance of the provision of sub-section (1)(b) of Section 3 of the Indian Medical Act, 1956 (102 of 1956), Dr. Ravi Kant was elected as a member of the Medical Council of India representing King George's Medical University (KGMU), Lucknow with effect from 20.03.2015;

And whereas Dr. Ravi Kant has joined as Director, AIIMS, Rishikesh and is no longer a medical faculty at KGMU, Lucknow. Therefore, Dr. Ravi Kant has ceased to be a member of Medical Council of India representing KGMU, Lucknow under section 3(1)(b) of IMC Act, 1956 in accordance with the provisions contained in Section 7(3) of IMC Act, 1956.

Now, therefore, Dr. Ravi Kant shall be deemed to have ceased to be a member of the Medical Council of India representing KGMU, Lucknow with effect from 14.04.2017.

[No. V-11013/02/2016-MEP]

D. V. K. RAO, Under Secy.

नई दिल्ली, 10 जून, 2017

का.आ. 1418.—स्वास्थ्य एवं परिवार कल्याण मंत्रालय के अंतर्गत स्वास्थ्य सेवा महानिदेशालय के निम्नलिखित अधीनस्थ कार्यालय, जिसमें 80 प्रतिशत से अधिक अधिकारियों/कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजन के लिए प्रयोग) नियमावली, 1976 के नियम 10 के उप-नियम (4) के तहत अधिसूचित किया जाता है :-

1. सरकारी चिकित्सा सामग्री भण्डार, करनाल

[सं. ई-11012/08/2014-हिंदी-II]

सुधीर कुमार, संयुक्त सचिव

New Delhi, the 10th June, 2017

S.O. 1418.—In pursuance of Sub-rule (4) of Rule 10 of the Official Language (use for official purpose of the Union) Rules, 1976, the Central Government hereby notifies the following subordinate office of the Directorate General of Health Services under Ministry of Health and Family Welfare, whose 80 per cent staff have acquired working knowledge of Hindi.

1. Government Medical Stores Depot, Karnal.

[No. E-11012/08/2014- Hindi-II]

SUDHIR KUMAR, Jt. Secy.

संस्कृति मंत्रालय

नई दिल्ली, 5 जून, 2017

का.आ. 1419.—केंद्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम 4 के अनुसरण में संस्कृति मंत्रालय के अंतर्गत आने वाले कार्यालय, उप अधीक्षण पुरातत्वविद का कार्यालय, भारतीय पुरातत्व सर्वेक्षण, नई दिल्ली लघु मंडल, पुरातत्व भवन, डी ब्लॉक, जी. पी. ओ. काम्पलैक्स, आई. एन. ए., नई दिल्ली -1100023 जिसमें 80 प्रतिशत से अधिक अधिकारियों/कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है।

यह अधिसूचना राजपत्र में प्रकाशन की तारीख से प्रवृत्त होगी।

[फा. सं. ई. 13016/1/2017- हिंदी]

पंकज राग, संयुक्त सचिव

MINISTRY OF CULTURE

New Delhi, the 5th June, 2017

S.O. 1419.—In pursuance of Sub-rule (4) of Rule 10 of the Official Language (Use for official purposes of the Union) Rules, 1976, the Central Govt. hereby notifies the office of Deputy Superintendent Archaeologist, Archaeological Survey of India , New Delhi Mini-Circle, Puratatva Bhawan, D Block, G. P. O. Complex, I.N.A., New Delhi-1100023 under Ministry of Culture wherein more than 80% officers/staff have acquired working knowledge of Hindi.

This notification shall come into force from the date of publication in the Official Gazette.

[F. No. E.13016/1/2017-Hindi]

PANKAJ RAG, Jt. Secy.

वाणिज्य एवं उद्योग मंत्रालय

(वाणिज्य विभाग)

नई दिल्ली, 9 जून, 2017

का.आ. 1420.—केन्द्रीय सरकार, निर्यात (गुणवत्ता नियंत्रण एंव निरीक्षण) नियम, 1964 के नियम 12, के उपनियम (2) के साथ पठित, निर्यात (गुणवत्ता नियंत्रण एवं निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स एसजीएस इंडिया प्राइवेट लिमिटेड, पीएचई बंगला, बसुदेवपुर, खजांचक, हल्दिया, मेदिनीपुर पूर्व– 721602, पश्चिम बंगाल, को इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए भारत सरकार के शासकीय राजपत्र भाग-II, खंण्ड-3, उप खंण्ड(ii) में दिनांक 20 दिसम्बर, 1965 की अधिसूचना सं. का.आ. 3975, दिनांकित 20 दिसम्बर, 1965 में उपाबद्ध अनुसूचियों में विनिर्दिष्ट खनिज और अयस्क समूह-I, क्रम संख्या 1, 2 तथा 3 पर निर्दिष्ट मैंगनीज अयस्क, लौह अयस्क तथा फैरोमैंगनीज, फैरोमैंगनीज लावा सहित को क्रमश: निर्यात से पूर्व निम्नलिखित शर्तों के अधीन हल्दिया पत्तन, पश्चिम बंगाल में उक्त खनिज और अयस्क के निरीक्षण करने के लिए एक अभिकरण के रुप में मान्यता देती है, अर्थात् :

(i) यह अभिकरण, क्रमश: खनिज और अयस्क समूह-I का निर्यात (निरीक्षण) नियम, 1965 तथा खनिज और अयस्क समूह-II का निर्यात (निरीक्षण) नियम, 1965 के नियम 4 के अधीन निरीक्षण की पद्धति की जाँच करने के लिये निर्यात निरीक्षण परिषद् द्वारा निमित्त नामनिर्दिष्ट अधिकारियों को पर्याप्त सुविधाएं देगी; और

(ii) यह अभिकरण, इस अधिसूचना के अधीन अपने कार्यों के पालन में निदेशक (निरीक्षण और गुणवत्ता नियंत्रण) निर्यात निरीक्षण परिषद द्वारा समय-समय पर लिखित रूप में दिए गए ऐसे निर्देशों से आबद्ध होगा।

[फा.सं. के-डी.ओ.सी.-16/14(9)/2017 - निर्यात निरीक्षण]

संतोष कुमार सारंगी, संयुक्त सचिव

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

New Delhi, the 9th June, 2017

S.O. 1420.—In exercise of the powers conferred by the sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963) read with sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government hereby recognizes M/s. SGS India Private Limited, PHE bungalow, Basudevpur, Khanjanchak, Haldia, Purba Medinipur-721602, West Bengal, as an agency (hereinafter referred to as the said agency), for a period of three years from the date of publication of this notification, for the inspection of Manganese Ore, Iron Ore and Ferromaganese, including ferromanganese slag specified at serial number 1, 2 and 3 respectively under Minerals and Ores – Group I, in the Schedule to the notification number S.O. 3975, dated the 20thDecember, 1965, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated the 20thDecember, 1965, prior to export of the said Minerals and Ore at Haldia Port, West Bengal subject to the following conditions, namely: -

(i) the said agency shall give adequate facilities to the officers nominated by the Export Inspection Council in this behalf to carry out the inspection specified under rule 4 of the Export of Minerals and Ores - Group I (Inspection) Rules, 1965;

(ii) the said agency in performance of its function as specified in this notification, shall be bound by such directions as the Director (Inspection and Quality Control), Export Inspection Council may give, in writing from time to time.

[F.No. K-DoC-16/14(9)/2017- Export Inspection]

SANTOSH KUMAR SARANGI, Jt. Secy.

इलेक्ट्रॉनिक्स और सूचना प्रौद्योगिकी मंत्रालय

नई दिल्ली, 6 जून, 2017

का.आ. 1421.—केन्द्र सरकार एतद्द्वारा राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में, इलेक्ट्रॉनिक्स और सूचना प्रौद्योगिकी मंत्रालय के प्रशासनिक नियंत्रण के अंतर्गत आने वाले प्रगत संगणन विकास केंद्र (सी-डैक) नामक स्वायत्त संस्था के गुलमोहर क्रास रोड सं. 9, जुहू, मुम्बई स्थित कार्यालय, जिसके 80% से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है ।

[सं. 7(2)/2005-हि.अ.]

राजीव कुमार, संयुक्त सचिव

MINISTRY OF ELECTRONICS AND INFORMATION TECHNOLOGY

New Delhi, the 6th June, 2017

S.O. 1421.—In pursuance of Sub-rule (4) of Rule 10 of the Official Languages (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies the Centre for Development of Advanced Computing (C-DAC), an autonomous society under the administrative control of Ministry of Electronics and Information Technology, located at Gulmohar Cross Road No. 9, Juhu, Mumbai, whose more than 80% staff have acquired working knowledge of Hindi.

[No. 7(2)/2005- H.S.]

RAJIV KUMAR, Jt. Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 6 जून, 2017

का.आ. 1422.—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम 1962, (1962 का 50) की धारा 2 के खण्ड (अ) के अनुसरण में 2 फ़रवरी 2015 को भारत के राजपत्र में प्रकाशित, भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का.आ. 309 (अ) तारीख 23 जनवरी, 2015 में निम्नलिखित रूप में **संशोधन करती है**,

"श्री सिद्धार्थ अवस्थी, उप प्रबन्धक(नि)" **शब्दों के स्थान पर**, "श्री धीरज सिंह, सहायक प्रबन्धक (ओ एंड एम)," **शब्द रखे जाएंगे**।

यह अधिसूचना जारी होने की तारीख से लागू होगी ।

[सं. आर-25011/11/2014–ओआर – I (पार्ट– I)]

पवन कुमार, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 6th June, 2017

S.O. 1422.—In pursuance of clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby makes the following amendment in the notification of Government of India in Ministry of Petroleum and Natural Gas S.O. 309 (E) dated 23rd January 2015, namely:

In the said notification, **for the words** "Shri Siddharth Awasthi, Deputy Manager (C)" **the words** "Shri Dhiraj Singh, Assistant Manager (O & M)" **shall be substituted**.

The notification is applicable from the date of issue.

[No. R-25011/11/2014-OR-I (Pt. I)]

PAWAN KUMAR, Under Secy.

उपभोक्ता मामले, खाद्य एवं सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

(भारतीय मानक ब्यूरो)

नई दिल्ली, 12 जून, 2017

का.आ. 1423.— भारतीय मानक ब्यूरो नियम, 1987 के नियम 9 के उपनियम (1) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि नीचे अनुसूची में दिए गए भारतीय मानकों संबंधी मानक मुहर के डिजाइन निर्धारित कर दिए गए हैं :-

अनुसूची

क्रमांक	मानक मुहर का डिजाइन	उत्पाद /उत्पाद का वर्ग	भारतीय मानक	लागू तिथि
(1)	(2)	(3)	(4)	(5)
1.		**IS 13340 (Part 1)/ IEC 60831-1** सेल्फ-हीलिंग शंट पावर कैपेसिटर्स	IS 13340(Part 1)/ IEC 60831-1	08.05.2017

2.	**IS 13585 (Part 1)/ IEC 60931-1**	नॉन सेल्फ-हीलिंग शंट पावर कैपेसिटर्स	IS 13585(Part 1)/ IEC 60931-1	08.05.2017

[सं. के. प्र. वि. - III /8:3]

सी. बी. सिंह, अपर महानिदेशक

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

(BUREAU OF INDIAN STANDARDS)

New Delhi, the 12th June, 2017

S.O. 1423.—In pursuance of sub-rule (1) of the Rule 9 of the Bureau of Indian Standards Rule 1987, the Bureau of Indian Standards, hereby notifies the Standard Mark, for the Indian Standards given in the schedule:

SCHEDULE

Sl No.	Design of the Standard Mark	Product/Class of Product	Indian Standard	Effective Date
(1)	(2)	(3)	(4)	(5)
1.	**IS 13340 (Part 1)/ IEC 60831-1**	Shunt Power Capacitors of the self-healing type	IS 13340(Part 1)/ IEC 60831-1	08.05.2017
2.	**IS 13585 (Part 1)/ IEC 60931-1**	Shunt Power Capacitors of the non self-healing type	IS 13585(Part 1)/ IEC 60931-1	08.05.2017

[F. No. CMD-III/8:3]

C. B. SINGH, Addl. Director General

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 5 जून, 2017

का.आ. 1424.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जे.एम. बक्शी एंड कं. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार

औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, मुम्बई के पंचाट (संदर्भ सं. 1/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.06.2017 को प्राप्त हुआ था।

[सं. एल-36011/04/2014-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 5th June, 2017

S.O. 1424.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1/2015) of the Central Government Industrial Tribunal-cum-Labour Court No.1, Mumbai as shown in the Annexure, in the Industrial Dispute between the management of M/s. J.M. Baxi and Company and their workmen, received by the Central Government on 05.06.2017.

[No. L-36011/04/2014-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

Present : Justice Surendra Vikram Singh Rathore, Presiding Officer

REFERENCE NO. CGIT-1/1 OF 2015

Parties:

Employers in relation to the management of

J.M. Baxi and Company

And

Their workmen

Appearances:

For the Management	:	None present
For the Union	:	Absent
State	:	Maharashtra

Mumbai, dated the 5th day of May, 2017.

AWARD PART-II

1. An application has been filed on behalf of the management with the prayer that this reference be disposed of in view of the settlement between the parties because after receiving payment of Rs.22,000/- the said workmen and the second party/Union have not appeared before this Tribunal inspite of sufficient service.

2. It transpires from the perusal of the record that none has appeared on behalf of the Union for the last so many dates and the management has entered into settlement with the workman Veressimo Fernandes and terms of settlement was filed on 25.2.2016. On the basis of the same, Award Part-I was passed on 25.2.2016 by my predecessor whereby Item No.2 and 3 of the Schedule of Reference were disposed of. It transpires from the perusal of the record that the Union has not put in appearance for a long time. On the date of the settlement Mr.Francis Rodrigues, General Secretary of the Union was present and thereafter vide order dated 21.4.2017 at Camp Goa, it was directed due to absence of the Union that case shall proceed ex parte against the union. Even thereafter no steps have been taken by the union to file any statement of claim with regard to first point of reference.

3. The first point of reference was as under:

> 1. *"Whether the action of the management of M/s. JM Baxi and company, Vasco-da-Gama, Goa in unilaterally implementing the insurance cover extending medical benefits efor its employees/workmen through New India Insurance Company Ltd during the currency of the settlement (existing settlement not terminated though expired on 31st Dec 2011) in contravention of Section 19(2) of ID Act 1947 is justified, legal and proper?*

A perusal of the aforesaid point of reference makes it clear that there was some settlement between the management and the union regarding the medical insurance cover of the workman and the said settlement expired on 31.12.2011. Thereafter the management extended the medical cover through New India Insurance Company Ltd. It transpires that the grievance of the union was that the said settlement was not terminated so the same must be continued.This claim, in absence of any other evidence to the contrary, does not appear to have force because when the terms of settlement itself provides a period during which it shall remain in force then after the expiry of the said period, unless the settlement is extended with the consent of both the parties the same cannot be extended unilaterally. It appears that the said point was raised only with regard to press the dispute of medical reimbursement of Shri Veresimmo Fernandes. Shri Veresimmo Fernandes has amicably settled his dispute with the management, therefore, there remains nothing in this reference.

4. Since the Union has not filed any Statement of claim and has not contested the reference, therefore, there is no material on record in support of their claim and demand. Thus this Tribunal is left with no option but to answer the reference in negative.

5. The reference is answered accordingly.

JUSTICE S. V. S. RATHORE, Presiding Officer

नई दिल्ली, 5 जून, 2017

का.आ. 1425.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, भुवनेश्वर के पंचाट (संदर्भ सं. 14/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.06.2017 को प्राप्त हुआ था।

[सं. एल-12011/5/2008-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 5th June, 2017

S.O. 1425.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 14/2008) of the Central Government Industrial Tribunal-cum-Labour Court No.2, Bhubaneswar as shown in the Annexure, in the Industrial Dispute between the management of Indian Bank and their workmen, received by the Central Government on 05.06.2017.

[No. L-12011/5/2008-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present :

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 14/2008

Date of Passing Award – 16th February, 2017

Between :

The Chief Manager, Indian Bank,
Circle Office, Plot No. 117/118, Station Square,
Bhubaneswar (Orissa) – 751 001 …1st Party-Management

(And)

The General Secretary,
Indian Bank Employees Union,
Plot No. 32, Ashok Nagar, Bhubaneswar,
Orissa – 751 009 …2nd Party-Union

Appearances:

Shri Kunar Kishore … For the 1st Party-Management

Shri Jagdish Jena … For the 2nd Party-Union

AWARD

This award arises out of a reference made by the Govt. of India in exercise of the powers conferred under section 10 of the Industrial Disputes Act, 1947 out of a dispute between the Management of Indian Bank and their workman under following schedule vide their letter No. L-12011/5/2008 – IR(B-II), dated 19.3.2008:-

> "Whether the action of the Management of Indian Bank in terminating the service of Shri Narayan Panda, Ex-Clerk-cum-Cashier by way of imposing punishment of compulsory retirement from service with effect from 10.6.2006 is legal and/or justified? If not, what relief the workman is entitled to?"

2. Facts, in narrow compass, giving rise to the reference as follows:-

In course of his employment the disputant workman Shri Narayan Panda while being posted and working as a Cash Clerk/Shroff in the Dhalapur Branch of the Management-Bank (Indian Bank) was alleged to have misbehaved with his superior authority (Branch Manager) and to have been involved in the activity as well as certain omissions and commissions on his part during discharge of his official duties amounting to official gross misconducts as defined under Clause 19(5)(c) & 19(5)(e) & 19(5)(i), 19(5)(j) & 19(7)(b) of the Bi-partite settlement dated 19.10.1966 between the Management and the Union. He was placed under suspension with effect from 30.5.1995 and a domestic enquiry was initiated against him with issue of a charge-sheet dated 8.9.1995. In the said domestic enquiry he was charged on twelve counts as mentioned below.

1. On 01.05.1995, he had prepared a debit voucher for payment of rent of Rs. 1400/- for generator and sent to the Manager for passing. The Manager released the voucher and the amount was credited to the S.B. A/c. of the generator supplier, Mr. Manoranjan Karna. When Mr. Panda prepared the SB w/s of Mr. Manoranjan Karna filling there the rent amount of Rs. 1400/-, the Manager insisted for appropriating a sum of Rs. 250/- to the IRDP loan a/c. of Mr. Manoranjan Karna. He became furious and shouted at the Manager stating "You cannot recover the amount from rent proceeds."

2. That, he had switched off the generator – when the Manager told him that he would pass the w/s only after discussion with the generator supplier – stating that he (Mr. Panda) would not allow anybody to use the generator. On account his above act, the customer service was very much hampered due to current failure.

3. That, at about 1.30 P.M. he went outside the premises and while returning about 1.45 p.m. he rushed towards the Manager in violent mood and in high pitch voice shouted at the Manager "Tu Manager Saala hamara generator rent kyon nahin pass karta hai? Yaha tu jiada strict dekha raha hai, aisa Manager bahut dekha hain"?

4. That, again at about 2.45 P.M. he went to the Manager in aggressive mood and asked him "Tu pass karibu ki nahin? If you use your pen in writing to Higher ups, I will use my knife on you". in threatening gestures and he grabbed the Manager's chair by his side and told "Shall I hit you with this?"

5. That, on 2.5.1995, when he had sent the SB w/s of the generator supplier again to the Manager altering the date without the authentication of Mr. Manoranjan Karna, Manager told him that he would pass the w/s only after discussion with Mr. Manoranjan Karna. On hearing this he told in front of the customers that he would not make any payments henceforth. When the Manager called for reasons, he replied that there was no cash. Again when the Manager told him that sufficient cash was available to make immediate payments, he retorted that he would draw himself whatever cash was available there. When the Manager asked him to draw cash after receipt of remittance from Boudh branch, he shouted in front of the customers" I will not make any payment; I will draw the money myself". When the Manager requested the customers to wait till the arrival of cash remittance from Boudh, he closed the case at 2.00 P.M., while the customers were still waiting for payment.

6. That, when the cash remittance arrived at 3.30 p.m. Manager instructed him to make payment to the waiting customers in late payment. He had refused the lawful orders of the Manager. Because of his acts customer service was very much hampered on that date.

7. That, on 3.5.1995, when the Manager sent his w/s. for Rs. 6,000/- for payment, he had deducted a sum of Rs. 1400/- and paid the balance amount. When the Manager asked him the reasons, he told Manager that he had kept back the amount of Rs. 1400/- towards rent on generator. When the Manager insisted in writing for deduction of Rs. 1400/- from his payment, he did not obey his orders. Despite Manager's

repeated instructions he had neither made full payment of Rs. 6000/- to him nor did he give in writing for deduction of Rs. 1400/- from Manager's payment.

8. That, when the Manager was busy in preparing the L.A. statement from the IRDP ledger, he rushed to the Manager in violent mood and snatched the IRDP ledger and threw it away, shouting, I will not allow you to do any clerical work.

9. That, on 18.5.1995, he had arranged Mr. Rama Joshi, Sarpanch of Ramgarh G.P. and Mr. Lakshmi Mahakud, Physical Education Teacher, Dhalpur High school, who are outsiders, to come and threaten the Manager with dire consequences on the generator rent issue and prevented the Manager from leaving the office premises. The situation became so tense that the Manager could not open the branch on 19.5.1995 fearing physical danger to him.

10. That, he had supplied and hired generator to the branch in the name of Mr. Manoranjan Karna and he had been receiving the rent.

11. That, he was in habit of coming to office later and leaving the office early.

12. That, he had availed BP facility at Dhalpur Branch by presenting the sB w/s of Smt. Padmini Padhi, holder SB a/c. 4737 of Boudh Branch. The BPs were realized either by transfer from his SB a/c. of Dhalpur branch or by remitting cash.

3. Domestic enquiry was commenced on 27.10.1995 after issue of charge sheet to the disputant workman. In the domestic enquiry seven witnesses were examined and twenty two documents were relied upon by the department to substantiate the charges raised against the disputant workman. The disputant workman is stated to have participated in the domestic enquiry being allowed to defend through a co-worker and he had also examined witnesses to refute the charges. Enquiry report was submitted on 27.7.2000 in which all charges except Charges number 3, 4, 5, 6, 7, 8, 9 and 12 were found proved and being found guilty of serious misconduct he was given compulsory retirement with superannuation benefits after being heard on the enquiry report. He is stated to have been found guilty of misconduct having disrupted customer service by switching off the generator in the branch office during current failure, disturbing customer service in the branch, disobeying the Manager's lawful instructions and refusing to make payments to the customers whose instruments were duly passed even though sufficient cash balance is available in the branch, and for mis-utilizing the B.P. facility without having sufficient balance in the a/c. and paid back the B.Ps either from S.B. a/c. Or by cash which were prejudicial to the interest of the Bank.

4. Punishment of compulsory retirement including the initiation of departmental proceeding has been challenged by the 2nd party-Union on a pleading and contention that the departmental enquiry being held after lapses of considerable period is not fair and proper. The second show-cause notice having been issued on 15.4.2005 after lapse of about ten years of the issue of charge-sheet and six years after the closure of the enquiry, the compulsory retirement in shape of punishment in the departmental proceeding is highly illegal and not maintainable in the eye of law. Testimony recorded by the witnesses examined on behalf of the Management and defence witnesses in the domestic enquiry are contrary to the findings of the enquiry officer. None of the charges raised against the disputant workman was established in any slightest manner from the materials led before the domestic enquiry and as such, the findings of the enquiry officer was perverse and contrary to the materials placed before him. No reasonable person in the said situations would arrive at a view taken by the enquiry officer. The disputant workman was removed from service on a vindictive attitude of the Management. It has been further contended that though, the disputant workman worked for about 20 years in different branches of the Management under different Managers, no adverse except the incident at Dhalapur branch was ever heard against him. The allegations said to have been proved in the departmental enquiry do not relate to any misconduct involving moral turpitude, financial irregularity, misappropriation of money or any act prejudicial to the interest of the Management-Bank. No pecuniary loss is found to have been caused to the Bank by the alleged misconduct of the disputant workman. The indiscipline behaviour reported by the Manager of the Dhalapur Branch has not been established by any eye witnesses in their statements before the enquiring officer and findings of the enquiry officer holding the workman guilty of misconduct is based on conjuncture and surmises derived from certain transacted documents of the Branch-Bank. Even, such findings based on conjunctures and surmises do not constitute any major or serious misconduct warranting punishment of dismissal in shape of compulsory retirement. The enquiry against the alleged omissions and commissions on the part of the 2nd party-workman having related to the year 1995 should have not been prolonged for a considerable period of 11 years to inflict a major punishment, more particularly when second show cause was issued in the year 2002 and infliction of compulsory retirement was made in the year 2006. Such major punishment is shockingly disproportionate to the gravity of the misconduct committed by the delinquent workman and the same is a blatant violation of the principles of natural justice. Prayer has been made for vitiating the departmental proceeding and to reinstate the disputant workman along with back wages and consequential service benefits.

5. The contention of the 2nd party-Union is contested by the Management on a stand that complaint being received from the Branch Manager, Dhalapur branch regarding riotous and indecent behaviour exhibited by the disputant workman during his employment as a Cash Clerk/Shroff in the above branch, a preliminary investigation was conducted. When it is emerged from the preliminary enquiry that the 2nd party-workman misbehaved his Branch Manager and disobeyed his instruction and order and acted in such a manner prejudicial to the interest of the Management-Bank and failed in his duty to give proper service to the customers which amount to gross misconduct as defined under clause no. 19.5 of the Bipartite Settlement between the Bank and its employees, the departmental proceeding was initiated. Charge-sheet showing the allegations raised against him along with statements of imputation and relevant documents were issued to the disputant workman inviting his explanation. Enquiry Officer was appointed and enquiry was held as per the procedure laid in the Certified Standing Order of the Management and in conformity to the principles of natural justice. The 2nd party-workman was provided with all required documents and allowed to defend him through a choice of his co-worker. He and his representative participated actively in the said domestic enquiry. He was extended all opportunities to defend himself in the said proceeding. He was allowed to cross examine the witnesses examined on behalf of the department and to adduce evidence in his defence. He was issued with the copy of the findings of the enquiry officer with notice to submit his explanation before inflicting major punishment. Having been found guilty of serious misconduct for exhibiting riotous and indecent behaviour in his working place, disrupting customer service of the Bank, doing transaction with the branch by giving a generator on hire and acting prejudicial to the interest of the Bank, punishment of compulsory retirement with superannuation benefit was been rightly and properly inflicted on the disputant workman. There being no lapse or flaw in the departmental proceeding and findings of the enquiry officer, any interference by the Tribunal is unwarranted. The Management also contends that considering the nature of allegations proved against the workman, the order of compulsory retirement from service cannot be said to be disproportionate and as such, the contentions advanced by the 2nd party-Union should be discarded out-rightly.

6. In the light of above factual pleadings advanced by the parties, the following issues have been settled for adjudication of the above reference.

I S S U E S

1. Whether the reference is maintainable?
2. Whether the domestic enquiry conducted by the Management was fair and proper?
3. Whether the punishment by way of compulsory retirement imposed on the disputant was proportionate to the charges?
4. If not, what relief the disputant is entitled to?

7. As none of the parties to the reference insists for taking the fairness of the departmental enquiry as a preliminary one before considering other issues, the Tribunal felt it just and proper to hear all the issues simultaneously to adjudicate the dispute. The 2nd party-Union has examined the dismissed workman as W.W.-1 and filed documents like copy of the charge-sheet dated 8.9.1995, copy of the enquiry report, copy of the relevant portion of the enquiry report, copy of the document relating to generator. Copy of the application of the workman dated 29.4.2006 to review the departmental proceeding. Copy of the 2nd show cause notice, copy of the reply to the 2nd party-show cause notice, copy of the order dated 10.6.2006 of the disciplinary authority, copy of the appeal of the workman dated 14.7.2006 and copy of the order dated 28.9.2006 of the Appellate Authority which are marked as Ext.- 1 to Ext.-10, to establish its case whereas, the Management has exhibited the departmental proceedings file and the documents available thereon and examined Shri Adikanda Sethi, enquiry officer to refute the contention of the 2nd party-Union.

ISSUE NO. 2 & 3

8. These issues being very vital for the adjudication of the reference are taken up first for consideration. From the pleadings, evidence and written argument advanced by the 2nd party-Union it is seen that no serious allegation seems to have been raised by the 2nd party-Union in regard to the procedure allegedly adopted by the enquiry officer while conducting the domestic enquiry except to his findings in his report with regard to the misconduct allegedly committed by the disputant workman. No serious contention has been raised either in the claim statement of the 2nd party-Union, in his evidence or in the written argument that the departmental enquiry is to be vitiated on account of non-supply of necessary documents to the disputant workman or denying any opportunity to him to defend himself in proper manner in the domestic enquiry. A formal objection has been raised that the charges raised against the delinquent workman are not specific which is a violation of the principles of natural justice and rules of the Certified Standing Order. On going through the charge-sheet issued against the disputant workman it is seen that the allegation has no basis since the incidents and allegations constituting the charges are elaborate and specific raising any confusion. On the other hand it is emerging from the pleadings and evidence of the parties that charge-sheet was issued along with necessary papers in sufficient advance to the commencement of the domestic enquiry. Evidence of the

departmental witnesses were recorded and documents of the department were exhibited in presence of the workman and his defence representative. It is found from the domestic enquiry file that witnesses were recalled and cross examined further at the instance of the 2nd party-Union, when it was pointed out to the enquiry officer that the witnesses were not properly cross examined by the disputant workman in absence of defence representative on the date of recording their evidence at the first instance. Having adduced evidence in his defence the disputant workman seems to have participated in the departmental proceeding in all stages of the enquiry. He was provided with a copy of the findings of the enquiry officer and invited to submit his explanations with reminders before inflicting the alleged major punishment. All orders in the departmental proceeding seem to have been passed after being heard the Presenting Officer as well as the delinquent-workman/his representative. Hence, the contention and argument advanced by the 2nd party-Union to the effect that the disputant workman was not given due opportunity to defend himself in the domestic enquiry has no substantial force.

9. The other contentions raised by the 2nd party-Union is that the findings of the enquiry officer are not based on the materials/evidence laid before him and his report holding the disputant workman guilty of misconduct appears to be on conjunctures and surmises inferred from certain Bank transaction records. It is argued that the same being perverse, the disputant workman should have not been held guilty of misconduct and the departmental proceeding is to be vitiated. In this regard law is well settled that the Tribunal cannot re-appreciate the evidence and materials led before the domestic enquiry as an appellate authority as to draw its own conclusion to vitiate the departmental proceeding unless it is apparent on the face of the enquiry record that the findings of the enquiry officer is perverse in the context of evidence and materials led before him. The Tribunal is only required to consider whether the view taken by the enquiry officer on the basis of materials placed before him is a possible view that can be arrived at by a person having reasonable understanding. There is no serious dispute that principle of natural justice is required to be complied with in a domestic enquiry but, the said principle cannot be stretched too far nor it can be applied in a vacuum. It is trite that the standard of proof required in a domestic enquiry is absolutely different than the standard of proof applied in a criminal trial. Keeping in view the above principles set out by the Hon'ble Apex Court from time to time if the copy of the enquiry proceeding file is examined, it cannot be said that the findings of the enquiry officer relating to certain charges said to have been established against the delinquent/disputant workman are correct. His findings on those charges are not free from perverseness as the findings are not based on any legal evidence led in the domestic enquiry. On a close scrutiny of the materials presented before the enquiry officer and his findings it is found that materials/evidence are lacking to establish the charge number 5 i.e. inspite of availability of sufficient cash in the branch for making payment to the customers on the relevant day the delinquent-workman failed to make payment to the customers. Moreover, inference can be drawn that cash was available in the branch after its receipt from Boudh after cash transaction hour. This view is only possible from the statement of customers-cum-departmental witness number 4 Mr. Sambhu Behera and the finding given by the enquiry officer on Charge Number 6. In his finding on Charge No. 6 the enquiry officer has categorically stated that the time of arrival of cash remittance at 3.30 P.M. could not be established by the Presenting Officer as the defence has produced the relevant T.A. bills produced by the employees for bringing cash remittance, which stated the arrival of cash at 5.30 P.M. It appears that the finding of the enquiry officer holding the disputant workman guilty of disobeying the instruction and order of the Branch Manager to make payment to the customers is out of conjunctures and surmises inferred from certain Bank transaction documents and the statement of Mr. Sambhu Behera made at the time of preliminary enquiry. Similarly charges on the count 9 and 10 that on 18.5.1995 the disputant workman arranged Shri Rama Doshi (Sarpanch of Ramagarh Gram Panchayat and Shri Laxmi Mahakud P.E.T. Dhalapur High School) to criminally intimade the Branch Manager with dire consequences on the issue of payment of rent for the hired generator and involvement of the disputant workman in supplying the generator to the branch on hire in the name of Manoranjan Karna or else-one are not based on any legal evidence. There are no direct or circumstantial materials/evidence to connect the disputant workman with the incident of 18.5.1995 in which Shri Doshi and Shri Mahakud were alleged to have misbehaved and threatened the Branch Manager. Similarly no material whatever in nature is available to hold that the disputant workman lent his generator on hire to the Bank through Manoranjan Karna or in the name of some-one else including Shri Rama Doshi. It is seen from the pleadings and contentions advanced by the parties and materials placed by the parties in the domestic enquiry that the entire episode which led issue of charge-sheet and departmental enquiry against the disputant workman, was centered around the conduct exhibited by the disputant workman on 1.5.1995 in disobeying the instruction and order of the Branch Manager to deduct an amount of Rs. 250/- from the disbursement of Rs. 1400/- in favour of Shri Karna towards payment of higher charges for the generator. At best, it can be inferred from the materials that the disputant workman was highly interested or found to be more concerned towards payment of full higher rent to the owner of the generator. Similarly, putting a lock on the generator or switching off the same cannot lead to a conclusion that he was the owner of the generator. Except above facts nothing substantial is found in the materials led before the enquiry officer to hold that the delinquent workman had given his generator on hire to the Bank and he arranged Shri Doshi and Shri Mahakud to intimade or to abuse the Branch Manager on 18.5.1995. On the other hand, it is emerging from the materials placed before the domestic enquiry that Shri Doshi was claiming rent for supplying the generator to the Bank on hire basis and it cannot be ruled out that the incident of 18.5.1995 might be his sole creation for not receiving the

higher charges of the generator which he claimed to have been given to the Bank on hire basis. Thus, the conclusion drawn by the enquiry officer in regard to the charges number. 9 and 10 seems to be on conjunctures and surmises. Charge No. 12 is said to have been established partly and it is admitted that no financial loss was incurred by the Management-Bank for the alleged act of the disputant workman. It is settled that there is a two-fold tests of perversity of a finding. The first test is that the finding is not supported by any legal evidence at all and the second is that on the basis of the materials on record, no reasonable person could have arrived at the finding complained of. Keeping in view the materials pressed before the enquiry officer and my elaborate discussion made earlier it can be said that the findings of the enquiring officer on charges relating to number 6, 9 and 10 can be treated as perverse since those findings are not supported by any legal evidence as well as no reasonable person could have given such findings on the basis of materials placed in the domestic enquiry.

10. For the discussions and analysis made above, it is found that the domestic enquiry had exonerated the disputant workman from the charges number 3, 4 and 11 in which the disputant workman was alleged to have misbehaved his Branch Manager and threatened him with assault and he was in habit of coming late to the office and leaving the office earlier. In regard to the findings of the enquiry officer on the charges of disobeying the instruction of the Manager to disburse and make payment to the customers of the Bank, arranging Shri Joshi and Shri Mahakud to manhandle and criminally intimaded the Branch Manager on 18.5.1995 and his giving generator on hire to the branch are found to be perverse on account of the same being based on conjunctures and surmises and not based on any legal evidence as well as no reasonable person can arrive at such conclusions on the evidence/materials led before the enquiry officer. Now the question arises whether the entire departmental proceeding is to be vitiated on account of findings on certain charges raised against the disputant workman are perverse whereas, other charges are found to have been established in the departmental proceeding. In this regard law is settled that the departmental proceeding cannot be held fair and proper if the findings of the enquiry officer that of the disciplinary authority is perverse even though it is recorded that proper procedure was adopted and due opportunity was extended to a delinquent in a departmental proceeding. But, in the case at hand other charges relating to causing disturbance in the branch by switching off the generator disobeying the instruction of the Manager to keep Rs. 250/- from the disbursement of Rs. 1400/- in favour of Shri Manoranjan Karna for its deposit against an outstanding loan, making less payment to his Branch Manager against his withdrawal and availing B.P. facility without having sufficient fund in his S.B. Account are found to have been established in the domestic enquiry. It is already held that the domestic enquiry was conducted as per the procedure laid down in the Certified Standing Order as well as in conformity to the principles of natural justice and the disputant workman was given just and proper opportunities to defend himself in the enquiry. Be that as it may, the entire proceeding cannot be vitiated except giving benefit to the disputant workman and exonerating him from the charges in the head number 5, 6, 9 and 10.

11. In the above back-drops, now it is to be seen whether the punishment of compulsory retirement with superannuation benefit would remain intact or the same is to be found just and proper and the same was not shockingly disproportionate to the gravity of the misconduct established against the disputant workman. If, the said punishment is found excessive and highly disproportionate to the misconduct of the disputant workman then what punishment is to be inflicted in the given situation. Further, in view of rival submissions advanced by the parties it is to be seen whether the Tribunal has any jurisdiction to interfere in the matter of punishment inflicted to the workman on account of some charges not serious in nature being established against him. It is pertinent to mention here that there is no serious dispute to the claim of the 2nd party-Union that the disputant workman had no adverse reporting in past. Further-more, disputant-workman's commissions and omissions, for which he was found to have been guilty in the departmental enquiry, were only confined to his conduct exhibited in the branch on 1.5.1995 to 2.5.1995 and they are mostly related to his dis-obeying instructions of the Manager for deducting certain amount from the disbursement to a customer, making less payment to the Branch Manager against his entitlement, exhibiting indecent behaviour to his Branch Manager by throwing the ledger/register on the table of the Branch Manager, causing disturbances in the branch by switching off the generator and availing B.P. facility beyond its limit. As a settle principle imposing punishment for a proved act of misconduct is a matter for the disciplinary authority to decide and normally it should not be interfered with by the Tribunals. The Tribunal is not required to consider the propriety or adequacy of the punishment. At the same time it has been settled that where the punishment is shockingly disproportionate, regard being had to be particular conduct and the past record, or is such as no reasonable employer would ever impose in like circumstances, the Tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice. In case of Kailashnath Gupta –versus- E.O., Allahabad Bank, AIR 2003 SC 1377 the Hon'ble Apex Court have held that the power of interference by the Tribunal/Court with the quantum of punishment is extremely limited, but when the relevant factors are not taken note of, which have some bearing on the quantum of punishment, certainly the Court can direct reconsideration or in an appropriate case to shorten litigation, indicate the punishment to be awarded. Applying the same principles to the instant case it may be stated here that punishment of compulsory retirement would be highly disproportionate to the charges which this Tribunal finds to have been established against the disputant workman. When the domestic enquiry had exonerated the workman from the charges of misbehaving with his Branch Manager and this Tribunal finds that there is no legal evidence to hold him guilty for arranging outsiders to manhandle and

threaten the Branch Manager, the punishment of compulsory retirement was unwarranted and the same seems to be highly excessive and appears to be inflicted on vindictiveness. It cannot be over-sighted in the instant case that, though show cause notice was issued to the disputant workman in 2002 after closure of the departmental enquiry, the Management took a long time in as much as three/four years to inflict the major punishment like compulsory retirement. In the above facts and circumstances the order of compulsory retirement as a punishment for the established charges, which are not so serious in nature, is not maintainable in the eye of law. Further, to shorten the litigation I find that stoppage of two increments with cumulative effect would have been just and appropriate punishment to be inflicted on the disputant workman for the charges found to have been established against him. Ten years since have been elapsed after the compulsory retirement of the disputant workman and he might have attained the age of superannuation in the meanwhile. Because of his untimely compulsory retirement he could not render any service to the Bank. Taking all above factors into consideration I hold that the punishment of compulsory retirement of the disputant workman in the given situations is illegal and unjust. Hence, the disputant workman be reinstated along with fifty percent of his back wages and other service benefits being deemed to be in service, if he has not attained the age of superannuation. But there would be a stoppage of two annual increments without cumulative effect as a measure of punishment for the misconduct established against him. In case of he being found to have attained the age of superannuation he would receive only the financial benefits on the basis of the award mentioned earlier.

ISSUE NO. 1 & 4

12. In view of my above findings and the issues having not been pressed by either side, there is no need to give any answer on these issues.

13. For the reasons discussed above I am inclined to hold that the compulsory retirement with effect from 10.06.2006 is unjust and illegal as mentioned earlier the disputant workman is entitled for his reinstatement with fifty percent back wages and other service benefits along with stoppage of two annual increments without cumulative effect as a measure of punishment for the charges found to have been established by this Tribunal. The award is to be implemented within two months of its official gazette notification.

14. Reference is answered accordingly.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 5 जून, 2017

का.आ. 1426.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सैन्ट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं. 51/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.06.2017 को प्राप्त हुआ था।

[सं. एल-12012/12/2013-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 5th June, 2017

S.O. 1426.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 51/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur (U.P.) as shown in the Annexure, in the Industrial Dispute between the management of Central Bank of India and their workmen, received by the Central Government on 05.06.2017.

[No. L-12012/12/2013-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE SRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 51 of 2013

Between :

Sri Nand Kumar Upadhyay,
6 Shreejipuram NH-2,
Sikandara,
Agra-1

And

The Regional Manager,
Central Bank of India,
Regional Office,
Sanjay Place,
Agra

AWARD

1. Central Government, Mol, New Delhi, vide notification no.L-12012/12/2013-IR (B-II) dated 03.05.13 has referred the following dispute for adjudication to this tribunal.

2. Whether the action of the management Regional Manager, Central Bank of India, Agra in imposing penalty of voluntary vacation of service on Sri Nand Kumar Upadhyay with effect from 09.02.08 without following the procedure is just and proper and if not what relief the concerned workman is entitled?

3. The case of the worker in short is that while working as clerk at Cant branch of the bank, he was called to explain as to why he remained absent from his duties by letter dated 08.08.07. Worker replied the said letter of the bank stating that allegation leveled in the letter is absolutely false and he did not remain absent during the period 12.12.06 to 08.08.07. In fact the worker submitted an leave application on 09.02.08 on the ground of illness which was rejected by the bank in cursory manner and thereafter worker never received any memo from the bank.

4. On 11.02.08 the worker reported for duty in the bank but he was not allowed to resume his duties on the saying that his services were removed by the bank. In this regard it is pertinent to mention here that the letter dated 08.02.08 of the bank was received by the worker in the afternoon of 09.02.08 and as there was half day working till 1.00 p.m. in the bank being Saturday where after bank stands closed still the worker went to the bank to join his services but the branch manager told him that today no joining will take place and 10.02.08 being Sunday, bank was closed as such on Monday i.e. 11.02.08 worker again visited the branch to resume his duties. It is further alleged by the worker that by order dated 09.02.08 it was informed to him that he was treated to have voluntary vacated his services his name was struck off from the records of the bank with effect from 09.02.08. In this way the bank has removed his services with ulterior motive without trying to know whether the worker came for joining his duties or not.

5. It is also alleged by the worker that before removing his services he was neither issued any charge sheet nor any domestic inquiry was conducted and even no opportunity was ever afforded to put up his defense. In this way it is very much clear that the action of the management is illegal and against the rules of natural justice.

6. The worker therefore has prayed that the action of the management as referred to in the reference order be set aside and he be allowed reinstatement in service with back wages and consequential benefits.

7. Management filed its reply in which it is stated that there exist no relationship of employer and employee between the bank and the worker; worker has suppressed the material facts and by filing the present claim petition the worker is trying to keep on pressure on the bank; the worker has no locus standi to raise the present dispute because he remained failed to comply with the orders dated 28.11.07 as well as 08.01.08; the worker has completely failed to report for duty within stipulated time and by order dated 09.02.08 it has been treated that he has voluntarily vacated his employ6ment due to his unauthorized absence from 12.12.06; the instant matter is out of purview of section 2-A of the Act; proper and legal action has been taken by the bank according to para 33 of 8th Bipartite Settlement; worker was relieved from Kamla Nagar Branch Agra to report at Cantt. Branch of the bank by letter dated 11.12.06 but he remained unauthorisedly absent since 12.12.06 till 09.02.08 and deliberately remained failed to comply with the order dated 08.01.08; worker has never furnished any medical certificate of the doctor approved by the bank and his referred application was disposed properly by the bank authorities; the letters of the bank dated 28.11.07 and 08.01.08 were duly received by the worker on 06.12.07 and 10.01.08 but he never reported for his duties within the stipulated period therefore appropriate action in accordance with the rules was taken by the bank and there is no illegality of malafide therein, therefore, the worker is not entitled for any relief as prayed by him and his claim is liable to be rejected.

8. Worker has filed rejoinder but nothing new has been added therein except reiterating the facts already pleaded by him in his claim petition.

9. Worker by list of documents have filed 9 documents. Management by application dated 02.02.16 has filed certain documents from paper no.14/4 to 11. Management has also filed original documents which are four in numbers by application dated 02.02.16.

10. Worker has examined himself as w.w.1 in support of his claim and the management has also examined Sri Ram Ji Lal Nayak as M.W.1 in support of banks case.

11. Tribunal has heard the arguments of both sides at length and have gone through the records of the case.

12. It appears from perusal of records that the worker Sri Nand Kumar Upadhyay was treated to have voluntarily vacated his services in terms of par 33 of 8th Bipartite Settlement by order dated 03.02.08 which is paper no.15/8. The relevant provision of para 33 of 8th Bipartite Settlement reads as under-

Voluntary Cessation of Employment:

(i) When an employee absents himself from work for a period of 90 or more consecutive days without prior sanction from the Competent Authority or beyond the period of leave sanctioned originally including any extension thereof or when there is satisfactory evidence that he has taken up employment in India or outside, the management at any time thereafter may give a notice to the employee at his last known address as recorded with the bank calling upon him to report for work within 30 days of the date of notice.

Unless the employee reports for work within 30 days of the notice or gives an explanation for his absence within the period of 30 days satisfying the management interalia that he has not taken up another employment or avocation, the employee shall be given a further notice to report for work within 30 days of the notice failing which the employee will be deemed to have voluntarily vacated his employment on the expiry of the said notice and advised accordingly by registered post.

In the event of the employee submitting a satisfactory reply, he shall be permitted to report for work thereafter within 30 day from the date of expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rules/conditions of service.

If the employee fails to report for work within this 30 days period, then he shall be given a final notice to report for work within 30 days of this notice failing which the employee will be deemed to have voluntarily vacated his employment on the expiry of the said notice and advised accordingly by registered post.

(ii) If an employee again absents himself for the second time within a period of 30 days without submitting any application and obtaining sanction thereof after reporting for duty in response to the first notice given after 90 days of absence or within 30 days period granted to him for reporting to work on his submitting a satisfactory reply to the first notice, a further notice shall be given after 30 days of such absence giving him 30 days time to report. If he fails to report for work or reports for work in response to the notice but absents himself a third time from work within a period of 30- days without prior sanction, his name shall be struck off from the rolls of the establishment after 30 days of such absence under intimation to him by registered post deeming that he has voluntarily vacated his appointment.

(iii) Any notice under this clause shall be in a language understood by the employee concerned. The notice shall be sent to him by registered post wit acknowledgement due. Where the notice under this clause is sent to the employee by registered acknowledgement due at the last recorded address communicated in writing by the employee and acknowledged by the bank, the same shall be deemed as good and proper service.

13. It has to be considered in this case whether worker abstained from duties for the period of 90 days or more without prior sanction or whether he has taken another employment and whether the worker has not responded to the notice issued by bank. It is also to be seen whether department inquiry before terminating the service of worker was necessary.

14. Worker Nand Kumar Upadhyay examined himself as WW1. He stated on affidavit that he had submitted application for leave along with medical certificate on 27-11-06 vide application dated 21-12-2006 under registered post to chief manager and had also submitted application for joining duties on 11-02-2008 and also submitted application on the same day under registered post. He also filed his medical certificate of illness since 01-07-2007 to 09-02-2008. He received letter of Bank dated 09-1-2008 on 10-01-2008 and his joining on 11-02-2008 was refused by bank. His service was terminated without any enquiry or charge sheet which is illegal?

15. In his cross examination WW1 N.K.Upadhyay, has deposed that his case was taken up by Union and Union obtained his signature on papers. He has also admitted that he was transferred to CANTT branch Agra vide letter no. 10/6 and was relieved on 11-12-06 during that period he was on leave. He could not join at CANTT branch within 30 days as he was sick. He received letter dated 08-01-2008 on 10-01-2008. In the compliance of direction he went to join the duties on 11-02-2008 but chief manager has refused to take him on duties. He demanded leave upto 09-02-2008 through letter no. 15/3 but he did not filed any medical certificate in support. Bank has informed him through letter no. 15/5 that his leave was rejected. He received letter no. 15/5 on 09-02-2008 at about 11 am.

16. Management examined Shri Ram Ji Lal Nayak as MW1 who has stated on affidavit that the worker was transferred to CANTT branch Agra and relieved from Kamla Nagar branch by letter dated 11-12-2006 but worker did

not comply the order and remained unauthorized absent. He has filed any medical certificate and thereafter final notice dated 08-02-2008 was send to the worker to report for duties within 30 days. Worker send a letter dated 06-02-2008 for grant of leave till 09-02-2008 which was received on the bank on 07-02-2009 which was rejected as no medical certificate was filed as he did not joined the service within 30 days of final notice. His service was treated as voluntarily vacated with effect from 09-02-2008.

17. In his cross examination MW1 Ram Ji Nayak has deposed that he has no personal knowledge in the matter and he is giving his evidence on the basis of record. Worker was transferred to CANTT branch Agra but he did not join. Paper no. 15/3 is leave application of worker dated 06-02-2008 which was rejected and worker was informed on 12-02-2008. He does not know whether 09-02-2008 was Saturday or not and 10-02-2008 was Sunday or not. There is no record to show that worker came to join on 11-02-2008.

18. Now it is to be seen whether worker has absented himself from work without any sufficient reason or information to the bank authorities.

19. Worker Shri Upadhyay has filed copy of application given to chief manger dated 21-12-2006 which is paper no 14/4 where in worker has informed chief manager that he was on leave since 23-11-06 due to illness of his son and during his leave period he was transferred to branch Agra Cantt. He further requested that he may be granted leave upto 23-12-06. This paper is admitted to be received in bank by MW1 Shri Ram Ji LaL Nayak who has stated in his cross examination that this paper has been sent by worker but his record is not available in the bank. It clearly shows that worker has been transferred to Agra Cantt branch during his leave period and further no order of bank is set to have been passed on this application of worker dated 21-12-2006 and worker was relieved from his charge in absence on 11-12-2006.

20. Bank authorities have issued notice to worker under clause 33 of Bipartite settlement on 28-11-07 where in absence of worker has shown to be off about 351 days. It is necessary to mention that no departmental enquiry was conducted for the alleged absence of worker. Worker is said to have not replied to this notice and thereafter on 08-1-2008 final notice under clause 33 of bipartite was issued with the direction to worker to report within 30 days of this notice which was replied by worker on 06-02-08 requesting that he is not well and unable to attend the duties and he may be granted leave upto 09-02-08 which is paper no 15/3. This prayer of worker for granting leave upto 9-02-08 was refused for want of medical certificate by the order dated 08-02-08 (paper no 15/5) and order was communicated to worker on 09-02-2008 on the same day final order has been passed on the ground that worker failed to join duties within stipulated time and had voluntarily vacated.

21. Worker Shri Upadhyay in his evidence has stated that he receive the order of rejection of his application on 09-02-2008 which was Saturday and thus 10-02-2008 was Sunday and 11-02-2008 he send letter paper no. 15/10 for granting him one opportunity to remain in service. He also alleges that he did not go personally to regional office but went to branch office. This fact was not denied by MW1 Shri Ram Ji Lal Nayak that 09-02-08 was Saturday and 10-02-08 was Sunday.

22. From above discussion it is apparently clear that worker has given application on ground of illness of his son on 21-12-06 and thereafter when he received notice from bank he has given application for grant of leave upto 9-02-08 on ground of his illness which was rejected when final order was passed. It was not inquired by bank authorities whether ground of illness of worker in his first application and thereafter ground of illness of worker himself in reply to the notice was genuine or not and it was rejected simply on ground that no medical certificate was attached. It appears that bank authorities were adamant to voluntarily vacate these services of workman without considering ground of leave mention in application of worker.

23. Beside this for long absence of worker bank authorities should start disciplinary proceeding against the worker and if the grounds given by worker are not sufficient department could serve charge sheet on worker and after completing domestic enquiry worker could have been punished by bank authority in accordance with the rules. This view is supported by apex court in unreported judgement given in appeal(civil) 3676 of 2006 General manager Vijya Bank and others VS Pramod Kumar Gupta vide judgement dated 24-08-06.

24. It is admitted to worker that he has attended the age of superannuation in 2009.

25. For the reasons and discussion given above the action of management in imposing penalty of voluntarily vacation of service of Shri Nand Upadhyay with effect from 09-02-2008 is not legal nor just and proper and worker is entitled to be reinstated symbolically as he has already attended the age of superannuation and further worker is entitled to receive back wages upto his date of his retirement and thereafter pensionary benefits in accordance with rules.

26. Award is passed accordingly in favour of worker and against management.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 5 जून, 2017

का.आ. 1427.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यू.टी.आई. एसेट मैनेजमैंट कं. प्रा. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, मुम्बई के पंचाट (संदर्भ सं. 25/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.06.2017 को प्राप्त हुआ था।

[सं. एल-12012/227/2003-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 5th June, 2017

S.O. 1427.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 25/2004) of the Central Government Industrial Tribunal-cum-Labour Court No.1, Mumbai as shown in the Annexure, in the Industrial Dispute between the management of M/s. UTI Asset Management Co. Pvt. Ltd. and their workmen, received by the Central Government on 05.06.2017.

[No. L-12012/227/2003-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

Present : Justice Surendra Vikram Singh Rathore, Presiding Officer

REFERENCE NO. CGIT-1/25 OF 2004

Parties:

Employers in relation to the management of

UTI Asset Management Co. Pvt. Ltd.

And

Their workman (Sudhir Keer)

Appearances :

For the Management	:	Ms. Nandini Menon, Adv.
For the workman	:	Mrs. Seema Chopda, Adv.
State	:	Maharashtra

Mumbai, dated the 5th day of May, 2017

AWARD

1.. As per the Schedule of this Reference, the following dispute was referred to this Tribunal.

> "*Whether the action of the management of Unit Trust of India Mutual Fund, Mumbai by not reinstating the services of Shri Sudhir Keer on the basis of Additional Session Judge is justified? If not, what relief Shri Sudhir Keer is entitled to?"*

It appears that in the reference, words "his acquittal by" could not be typed due to mistake, after words "basis of".

2. As per the Statement of Claim, Sudhir Keer (hereinafter referred to as the workman) was in permanent employment of the erstwhile Unit Trust of India which was converted into two companies namely; 1. UTI Asset Management Company Pvt. Ltd and 2. UTI Mutual Fund Private Ltd. The workman became the employee of UTI Asset Management Company Pvt. Ltd. He joined services in the UTI in July 1980 and had a clean and unblemished service record. He was issued a show-cause notice dated 14.6.1984 followed by another show-cause notice dated 16.6.1984 alleging act of misconduct of collection of cash as repurchase proceeds of 200 units on 28.2.1984 and repurchase of 3000 units during 3.3.1984 to 27.4.1984. The workman had submitted a detailed reply to the said notices on 25.6.1984 denying all the charges and explaining the allegations made against him as baseless and actuated by malafides. Thereafter the workman received two chargesheets dated 30.6.1984 and 8.8.1984 on the same subject since

the Management was not satisfied with his reply.Therefore departmental enquiry into the alleged charges were conducted. After completing the enquiry the Enquiry Officer recorded the finding of his guilt. The workman had received two reports of the Enquiry Officer alongwith a show-cause notice and finally received a letter dated 24.10.1985 from General Manager calling upon the workman to show-cause why he should not be dismissed from service of the Trust without notice. Reply to this notice was again submitted by the workman on 6.11.1985 and subsequently the workman was dismissed from employment vide order dated 13.2.1986 in terms of Section 55(1)(c) of the Unit Trust of India (Staff) Rules, 1978. It was also pleaded that before he was issued a chargesheet for the departmental enquiry the employer had already lodged a criminal complaint at Azad Maidan Police Station under Section 467, 468, 471, 420 and 114 of the Indian Penal Code on 9.8.1984. As a result of the aforesaid F.I.R. the workman was criminally prosecuted before Metropolitan Magistrate and vide judgement dated 24.11.2000, Magistrate convicted the workman of the charges leveled against him in that case and sentenced him to undergo six months imprisonment and also with fine of Rs.2000/- The said judgment of the Magistrate was challenged by the workman by preferring Appeal before the Court of Sessions. His Appeal bearing No. 301 of 2002 was heard and decided by the Session Judge. Vide judgment dated 2.4.2002 the Appellate Court allowed the Appeal and acquitted the workman of the offences for which he was charged with. After his acquittal, the workman approached the Management for his reinstatement which was turned down. Thereafter the workman requested the Labour Commissioner vide letter dated 11.4.2003 to intervene in the matter of unlawful dismissal and for his reinstatement with full back wages. Labour Commissioner commenced the conciliation proceedings which ended in a failure. Therefore, this Reference was made by the Department.

3. The case of the workman is that the basis for departmental enquiry and for criminal proceedings was one and the same and thereis no difference in the facts and circumstances constituting the alleged act of misconduct, therefore, the acquittal of the workman by Court of competent jurisdiction must prevail over the decision of the departmental proceedings. It was stated in the Statement of claim that law is very crystallized that if there is acquittal in the case giving benefit of doubt in that case, the decision of the employer shall prevail over the decision of the criminal court but if there is clean and honourable acquittal on the same facts and circumstances, then the verdict of the court must prevail.

4. In the Written Statement it has been stated by the Management that the second party workman was dismissed without notice from the service of the erstwhile UTI by an order dated 13.2.1986. The workman raised the issue before the management by a letter dated 20.9.2002 requesting the management to reinstate him with full back wages and continuity of service as he has been acquitted in appeal by the Session Court. The said demand of reinstatement was made for the first time after 16 years and 7 months of his dismissal from erstwhile UTI. Management has submitted that the dismissal of the second party workman and the criminal case pending against him were two virtually different causes of action therefore, there was no question of raising this industrial dispute. It has also been argued that the only ground taken by the workman is his acquittal in the criminal case and has nowhere been pleaded that there was any fault or irregularity or illegality in the departmental enquiry. It has also been pleaded that the departmental enquiry was held as per rules in which the workman had participated and punishment imposed on the workman was justified keeping in view the gravity of misconduct proved against him.

5. Both the parties have filed their documents which are not disputed. Written Arguments on behalf of both the parties have been filed.

6. The main ground of the workman is his acquittal in the criminal case and on this strength it is pleaded that the criminal proceeding and departmental enquiry were based on the same set of charges, documents and witnesses, therefore, the finding of the court of law must prevail over the departmental proceedings. In support of this submission reliance has been placed on the pronouncement of Calcutta High Court in the case of State of West Bengal and others vs.Vidya and another 2011 (3) LLN 157 (DB) Calcutta.

7. On the contrary in the written arguments, it has been argued on behalf of the management that in the departmental enquiry all the prescribed procedure was followed. The workman had participated in the departmental proceedings and has not challenged any illegality or irregularity in the said departmental proceedings. It has also been mentioned in the written arguments that the second party was handling dispatch of certificate, unit sales and re-purchases, redemption certificate as a part of his work profile. The same required a veryhigh level of integrity and honesty from him. His misconduct has led the first party justifiably losing their confidence in him. Therefore, the relief of reinstatement or back wages cannot be granted in his favour because once confidence of the employer in the honesty and integrity of the workman is lost due to acts of two misconducts, it will be against all settled legal principles to direct his reinstatement.

8. In the facts of the instant case, the workman has nowhere pleaded that the enquiry conducted against him was against the principles of natural justice or he was not given proper opportunity to defend him. Admittedly, he had taken part in the enquiry and on the basis of the said enquiry report he was dismissed from service. It is also admitted fact that the allegations on which the departmental proceedings were instituted against the workman were the same on

which the FIR was lodged against him and he was prosecuted. The Trial Court in its judgement had acquitted the workman in the matter concerning Latore, Remodos and Dhandekar and he was convicted only with regard to charge relating to one Moge. The only ground raised on behalf of the workman is that since the departmental proceedings and the criminal proceedings were based on the same facts and same set of evidence, therefore, acquittal in the criminal case would prevail over the conclusion of the departmental enquiry and accordingly he must be reinstated with all back wages.

9. On behalf of the management it has been argued that the workman was dismissed from service w.e.f.13.2.1986 and he moved an application for reinstatement on 29.9.2002. Such a huge delay by itself is a ground not go grant the relief prayed for. In the statement of claim, the workman has explained his delay and has stated that it was only because he was advised to request for reinstatement only after final decision in the criminal case. This has been considered as sufficient ground by Honourable Apex Court in the case of State Bank of Bikaner and Jaipur vs. Nemi Chand Nalvaya (2011) 4 SCC 584 wherein Honourable Apex Court has upheld the views taken by the Division Bench and has observed as under:

> "The respondent challenged the order of the appellate authority in WP No.450/1998. A leaned Single Judge of the Rajasthan High Court dismissed the writ petition on the ground that the appellate authority had not committed any error in dismissing the appeal on the ground of delay. The respondent filed a special appeal and the division bench of the High Court allowed the appeal by the impugned judgment dated 4.4.2006. The pendency of the criminal case was accepted as sufficient explanation regarding delay. The division bench held that the non-filing of the appeal by the respondent in time was due to a bona fide impression that he could do so after the disposal of the criminal proceedings.

10. On behalf of the workman reliance has been placed on Honourable Calcutta High Court in the case of State of West Bengal & Ors vs. Vidyasagar Pandey and another in 2011 (3) LLN 157 (DB) (Cal.) wherein the honourable Calcutta High Court has observed in paragraph 13 and 14 as under:

> "The contradictory evidence adduced by the P.Ws. before the criminal court should have been appreciated by the disciplinary authority while passing the final order. Most unfortunately, the disciplinary authority did not discuss the findings of the learned Magistrate and held the Constable concerned guilty ignoring the specific findings of the criminal court. The employee concerned namely, the respondent No. 1 was acquitted in the criminal trial before issuance of the final order by the disciplinary authority. Therefore, the disciplinary authority while passing the final order and holding the employee concerned guilty of the charge should have considered the specific observations and findings of the learned Magistrate especially when the criminal case was also initiated against the said employee on identical charge arising out of the same set of facts. The disciplinary authority also did not refer to and rely on any document and/or evidence which were not taken into consideration by the learned Magistrate while deciding the criminal case although the said disciplinary authority held the Constable concerned guilty ignoring the specific findings and order of acquittal passed by the learned Magistrate.
>
> Since both the criminal and departmental proceedings initiated against the respondent No. 1 are based on the identical charge arising out of the same set of facts, the findings of the learned Magistrate in respect of the said charge must prevail upon the disciplinary authority as the findings of the judicial authority should prevail upon the findings of the disciplinary authority on a particular issue."

11. There is a distinguishing factor in the facts of the instant case. In this case the workman was not dismissed from service only on the basis of his conviction in a criminal case but he was dismissed from service after holding a departmental enquiry in accordance with the procedure prescribed there for and no illegality or irregularity in conducting the said departmental proceedings has been alleged by the workman and criminal trial concluded after 16 years from the date of his dismissal.

12. In such circumstances what would be the effect of acquittal in the criminal case has been considered by the Honourable Apex Court in several judgements which shall be considered in subsequent part of the judgement. Law is settled on the point that strict principles of evidence do not apply in departmental proceedings. In a criminal case, the prosecution is obliged to prove its case beyond reasonable doubt while in a departmental proceedings the finding of guilt can be arrived at on the basis of pre-ponderence of probabilities.

13. The UTI is an institution dealing with the investment and management of the public money. Such an institution requires highest degree of honesty, integrity and trust of the public, therefore, very highest degree of honesty, integrity and confidence is required in its employees. It is never the amount of theft or misappropriation i.e. material but it is only the loss of confidence which is important in such cases. On this point, I would like to quote para 12 of the judgement of Honourable Bombay High Court in the case of Maharashtra State Road Transport Corporation vs. Baburao Raoji Shinde 2017 II LLJ 145 (Bom)wherein Hon'ble Bombay High Court has observed as under:

"It is settled law in the light of the judgment of the Honourable Apex Court in the matter of Janatha Bazar (South Kanara Central Co- operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Noukarana Sangha Etc. AIR 2000 SC 3129 : [(2000) 7 SCC 517] : LNIND 2000 SC 1272 , and the learned Division Bench judgment of this Court in the matter of P.R.Shele Vs. Union of India and others [2008 (2) Mh.L.J. 33], that the quantum of amount misappropriated is not significant. Once the act of misappropriation WP/4176/1997 is proved, the only punishment available is of dismissal from service."

Now we proceed to deal with the legal point involved in this reference. In the case of State of West Bengal vs. Sankar Ghosh (2014) 3 SCC 610 Hon'ble Apex Court has dealt with this legal position and has held in paragraph 16, 17 and 18 as under:

16. In Deputy Inspector General Vs. S. Samuthiram [(2013) 1 SCC 598], this Court in paragraph 24, 25 and 26 of the judgment has elaborately examined the meaning and scope of the "honourable acquittal" and held as follows :-

"26. As we have already indicated, in the absence of any provision in the service rules for reinstatement, if an employee is honourably acquitted by a criminal court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile, etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say that in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so." (underlined by me)

17. The judgment of S. Samuthiram (supra) was later followed by another Bench of this Court in Commissioner of Police, New Delhi & Anr. V. Mehar Singh [(2013) 7 SCC 685].

18. We indicate that the respondent could not lay his hand to any rule or regulation applicable to the Police Force stating that once an employee has been acquitted by a Criminal Court, as a matter of right, he should be reinstated in service, despite all the disciplinary proceedings. In otherwise there is no rule of automatic reinstatement on acquittal by a Criminal Court even though the charges levelled against the delinquent before the Enquiry Officer as well as the Criminal Court are the same. On this aspect, reference may be made to para 27 of the judgment in S. Samuthiram (supra), which reads as under:-

"27. We have also come across cases where the service rules provide that on registration of a criminal case, an employee can be kept under suspension and on acquittal by the criminal court, he be reinstated. In such cases, the reinstatement is automatic. There may be cases where the service rules provide that in spite of domestic enquiry, if the criminal court acquits an employee honourably, he could be reinstated. In other words, the issue whether an employee has to be reinstated in service or not depends upon the question whether the service rules contain any such provision for reinstatement and not as a matter of right. Such provisions are absent in the Tamil Nadu Service Rules."

(underlined by me)

14. In the case of Cholan Roadways Ltd vs. Thirugnanasambandam (2005) 3 Supreme Court cases 241 the Hon'ble Apex Court has held in para 15 and 16 as under:

15. It is now a well-settled principle of law that the principle of Evidence Act have no application in a domestic enquiry.

16. In Maharastra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others [(1991) 2 SCC 716], it was held:

"It is thus well settled law that strict rules of the Evidence Act, and the standard of proof envisaged therein do not apply to departmental proceedings or domestic tribunal. It is open to the authorities to receive and place on record all the necessary, relevant, cogent and acceptable material facts though not proved strictly in conformity with the Evidence Act. The material must be germane and relevant to the facts in issue. In grave cases like forgery, fraud, conspiracy, misappropriation, etc. seldom direct evidence would be available. Only the circumstantial evidence would furnish the proof. In our considered view inference from

the evidence and circumstances must be carefully distinguished from conjectures or speculation. The mind is prone to take pleasure to adapt circumstances to one another and even in straining them a little to force them to form parts of one connected whole. There must be evidence direct or circumstantial to deduce necessary inferences in proof of the facts in issue. There can be no inferences unless there are objective facts, direct or circumstantial from which to infer the other fact which it is sought to establish.The standard of proof is not proof beyond reasonable doubt but the preponderance of probabilities tending to draw an inference that the fact must be more probable. Standard of proof, however, cannot be put in a strait-jacket formula. No mathematical formula could be laid on degree of proof. The probative value could be gauged from facts and circumstances in a given case. The standard of proof is the same both in civil cases and domestic enquires."

15. In the case of Divisional Controller of Karnataka State Road Transport Corporation vs. M.G.Vittal Rao (1964) 7 SCR 596 which is a landmark judgement on the point of loss of confidence Hon'ble Apex Court has dealt with this Issue. The relevant part is hereby reproduced as under.

24. Thus, there can be no doubt regarding the settled legal proposition that as the standard of proof in both the proceedings is quite different, and the termination is not based on mere conviction of an employee in a criminal case, the acquittal of the employee in criminal case cannot be the basis of taking away the effect of departmental proceedings. Nor can such an action of the department be termed as double jeopardy. The judgment of this Court in Capt. M. Paul Anthony (supra) does not lay down the law of universal application. Facts, charges and nature of evidence etc. involved in an individual case would determine as to whether decision of acquittal would have any bearing on the findings recorded in the domestic enquiry.

LOSS OF CONFIDENCE

25. Once the employer has lost the confidence in the employee and the bona fide loss of confidence is affirmed, the order of punishment must be considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity, and in a case of loss of confidence, reinstatement cannot be directed. (Vide: Air India Corporation Bombay v. V.A. Ravellow, AIR 1972 SC 1343; Francis Kalein & Co. Pvt. Ltd. v. Their Workmen, AIR 1971 SC 2414; and Bharat Heavy Electricals Ltd. v. M. Chandrashekhar Reddy & Ors., AIR 2005 SC 2769).

26. In Kanhaiyalal Agrawal & Ors. v. Factory Manager, Gwaliar Sugar Co. Ltd., AIR 2001 SC 3645, this Court laid down the test for loss of confidence to find out as to whether there was bona fide loss of confidence in the employee, observing that, (i) the workman is holding the position of trust and confidence; (ii) by abusing such position, he commits act which results in forfeiting the same; and (iii) to continue him in service/establishment would be embarrassing and inconvenient to the employer, or would be detrimental to the discipline or security of the establishment. Loss of confidence cannot be subjective, based upon the mind of the management. Objective facts which would lead to a definite inference of apprehension in the mind of the management, regarding trustworthiness or reliability of the employee, must be alleged and proved.

(See also: Sudhir Vishnu Panvalkar v. Bank of India, AIR 1997 SC 2249).

27. In State Bank of India & Anr. v. Bela Bagchi & Ors., AIR 2005 SC 3272, this Court repelled the contention that even if by the misconduct of the employee the employer does not suffer any financial loss, he can be removed from service in a case of loss of confidence.

While deciding the said case, reliance has been placed upon its earlier judgment in Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik, (1996) 9 SCC 69.

28. An employer is not bound to keep an employee in service with whom relations have reached the point of complete loss of confidence/faith between the two. (Vide: Binny Ltd. v. Their Workmen & Anr., AIR 1972 SC 1975; The Binny Ltd. v. Their Workmen, AIR 1973 SC 1403; Anil Kumar Chakraborty & Anr. v. M/s. Saraswatipur Tea Company Ltd. & Ors., AIR 1982 SC 1062; Chandu Lal v. The Management of M/s. Pan American World Airways Inc., AIR 1985 SC 1128; Kamal Kishore Lakshman v. Management of M/s. Pan American World Airways Inc. & Ors., AIR 1987 SC 229; and M/s. Pearlite Liners Pvt. Ltd. v. Manorama Sirsi, AIR 2004 SC 1373).

29. In Indian Airlines Ltd. v. Prabha D. Kanan, AIR 2007 SC 548, while dealing with the similar issue this Court held that "loss of confidence cannot be subjective but there must be objective facts which would lead to a definite inference of apprehension in the mind of the employer regarding trustworthiness of the employee and which must be alleged and proved."

30. In case of theft, the quantum of theft is not important and what is important is the loss of confidence of employer in employee.

16. In the case of Kanhayalal Agrawal and others vs. Factory Manager, Gwalior Sugar Company Ltd. (2001) 9 SCC 609 Hon'bleApex Court has held in para 9 as under:

> *9. Substantial contention on the merits of the case by the employer in these appeals is that the finding of loss of confidence in the employee by the labour court has been reversed in appeal by the Industrial Court on unreasonable grounds. What must be pleaded and proved to invoke the aforesaid principle is that (i) the workman is holding a position of trust and confidence; (ii) by abusing such position, he commits acts which results in forfeiting the same; and (iii) to continue him in service would be embarrassing and inconvenient to the employer or would be detrimental to the discipline or security of the establishment. All these three aspects must be present to refuse reinstatement on ground of loss of confidence. Loss of confidence cannot be subjective based upon the mind of the Management. Objective facts which would lead to a definite inference of apprehension in the mind of the Management regarding trustworthiness or reliability of the employee must be alleged and proved. Else, the right of reinstatement ordinarily available to the employee will be lost.*

17. A perusal of the judgement of Court of Sessions shows that the appellate court has observed that learned Trial Court had placed reliance on the statement of the accused themselves and has also placed reliance on extra judicial confession made by the workman before PW-4. It is true that the said evidence may be a weak evidence in a criminal prosecution but so far as the departmental enquiry is concerned such evidence can form basis of conclusion of the guilt of the workman. As discussed earlier, the charge leveled against the workman in a institution which deals with the management of public money requires highest degree of confidence and definitely by such conduct, the workman has lost the confidence of the employer. I have also gone through the enquiry report. It is clear that the enquiry was conducted in fair manner and findings recorded during the enquiry were based on the material available on record and the evidence was rightly considered as per the standard prescribed for departmental enquiries. Workman had participated in the said enquiry and has not challenged the enquiry.

18. At this stage, I would like to consider the cae law relied upon by the workman. The facts of this cases are entirely different. In that case, it appears by the perusal of the judgement that departmental enquiry was pending when acquittal of the criminal case took place. The witness had given contradictory statement in criminal trial on the basis of which he was acquitted. The opinion of Hon'ble Calcutta High Court was that the Enquiry Officer was supposed to consider the contradictory statement made by the same witness in the criminal case and without considering the same the finding of guilt was held to be wrong in the departmental proceedings. But in the facts of this case, the departmental enquiry concluded in the year 1986 while the judgement of the Appellate High Court in criminal case was delivered in 2002. It transpires from the perusal of the enquiry report and also from the judgement in the criminal case that in both the proceedings the witnesses had supported the case against the workman but the evidence of the witness was not found to be totally reliable to prove the case against the workman beyond reasonable doubt. Accordingly, he was acquitted. Therefore, since the facts are entirely different, therefore, the workman is not entitled to the benefit of the case law relied upon by him. It is nowhere the case of the workman that in the service rules any provision exist which entitles him to be reinstated on his acquittal in a criminal case wiping out the conclusions of the departmental enquiry. It is not a case where because of the conviction the services of the workman was terminated but his services were terminated only after conducting a departmental enquiry. At this stage, I would like to quote some of the observation made by the Enquiry Officer in the Enquiry Reports.

> "*It has not been disputed by Shri Keer that the cheque in question has been encashed at the Shivaji Park Branch of the Corporation bank as at Ex.M-7. It has been conclusively proved as at Ex.M-8 to M-14 that the cheque was in fact encashed through a Savings Bank Account No. 9305 opened at the branch on the 11th June 1984 by means of a forgery in the name of Shri Latore."*
>
> *The account was opened through an introduction obtained on a false representation by Shri Keer from Miss Meena J. Borkar who is the niece of Shri Keer and who then had an account with the said branch as per Ex.M-10, Ex.M-12 to Ex.M-14. This has also not been disuted and has also been conclusively established. Miss Meena J. Borkar who is an introducer for opening of the said account is the niece of the charge sheeted employee and it has been established and it has been admitted by the charge sheeted employee that he had in fact obtained a blank introduction form signed by her which she had done upon a false representation to her that it was for opening his own personal account as at Ex.M-11. It would thus appear that the said cheque was fraudulently removed by Shri Keer from the envelope before dispatch, has been equally fraudulently encashed through the said account opened in the name of Shri Latore by means of the said letter of introduction obtained by Shri Keer from Miss Borkar who is his niece."*
>
> *It has been proved by the PO on the basis of the documents and witnesses produced by him that as summarized by him on page 6 para 7 and page 9 para 14 of his written submission, the charge-sheeted employee duped and deceived superior officers in accepting spurious documents as genuine by holding out that the parties presenting them were personally known to him and that in the process he was also vouching*

for the genuineness of the documents. It is also established that the charge-sheeted employee has transgressed office discipline and has abused and made a mockery of office procedure in resorting to actions which have resulted in wrongful financial gains to himself and wrongful loss to the Trust. The fact that he has done so knowingly has been admitted by the charge-sheeted employee in clear and unambiguous terms on page 5 para 5 of his written submission although in the same breath he falsely claims to have acted innocently without any malafide intentions.

A weak and lame defence has been attempted in trying to show that the forged document on the basis of which duplicate certificates was issued was prepared by him but that the actual signature is not in his handwriting. It is significant to note that despite ample time being made available to him, he has not been able to produce either a witness or a written opinion of another hand writing expert refuting the cogent well reasoned and unambiguous opini presented by the Management's said witness, Shri Wagh, recently retired from the Maharashtra Govt. Service and a leading authority on this subject to the effect that the forged signature of the unit holder has been forged by none other than the charge-sheeted himself."

A perusal of the enquiry report discloses that a very grave misconduct was committed by the workman and during enquiry the witnesses of the management had supported the case of the management. The conduct of the workman that comes out from the above findings of the Enquiry Officer was a very grave misconduct and mere acquittal in the criminal case cannot be a ground to order for reinstatement wiping out the conclusions of the departmental proceedings particularly when no malafide illegality or irregularity in holding the departmental proceedings has been alleged.

19. Thus, in this case, keeping in view the conduct of the accused particularly where the conclusions of the departmental enquiry have not been challenged and only on the acquittal in the criminal case, cannot be a ground for reinstatement. If the services of the workman would have been terminated only because of the conviction in the criminal case, then the matter might have been different. But in this case the services were terminated after holding regular and proper departmental enquiry. So in my considered view, the acquittal in criminal case cannot by itself be a ground to vitiate or to wash out the conclusion of the departmental enquiry where no illegality or irregularity in the departmental enquiry has been alleged. Thus the workman is not entitled to the relief claimed for and his termination was legal and valid.

20. Reference is answered accordingly.

JUSTICE S. V. S. RATHORE, Presiding Officer

नई दिल्ली, 5 जून, 2017

का.आ. 1428.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, भुवनेश्वर के पंचाट (संदर्भ सं. 37/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.06.2017 को प्राप्त हुआ था।

[सं. एल-12011/63/2009-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 5th June, 2017

S.O. 1428.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 37/2009) of the Central Government Industrial Tribunal-cum-Labour Court No.2, Bhubaneswar as shown in the Annexure, in the Industrial Dispute between the management of Indian Bank and their workmen, received by the Central Government on 05.06.2017.

[No. L-12011/63/2009-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present :

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 37/2009

Date of Passing Award – 20th February, 2017

Between :

The Deputy General Manager, Indian Bank,
Circle Office, Plot No. 117/118, Station Square,
Bhubaneswar (Orissa) – 751 001 …1st Party-Management

(And)

The General Secretary,
Indian Bank Employees Union,
Plot No. 32, Ashok Nagar, Bhubaneswar,
Orissa – 751 009 …2nd Party-Union.

Appearances:

Shri Kunal Kishore … For the 1st Party-Management

Shri Jagdish Jena … For the 2nd Party-Union

AWARD

This award arises out of a reference made by the Govt. of India in exercise of the powers conferred under section 10 of the Industrial Disputes Act, 1947 out of a dispute between the Management of Indian Bank and their workman under following schedule vide their letter No. L-12011/63/2008 – IR(B-II), dated 12.10.2009:-

> "Whether the action of the Management of Indian Bank in terminating the service of Shri Hari Sethi, Sub-Staff w.e.f. 14.8.2006 is legal and justified? What relief the workman is entitled to?"

2. Facts giving rise to the reference, in short, may be stated as follows:-

The disputant workman Shri Hari Sethi being employed under the 1st Party-Management in sub-staff category was posted as such in the Branch-Bank of the Management at Choudwar during the relevant period. On receipt of information regarding fraudulent withdrawal from savings account of one Paramananda Behera when a preliminary investigation was taken up by the Vigilance Officer of the Management-Bank, it was ascertained that Shri Sethi had withdrawn Rs. 20,000/-, 2,000/-, 600/- and 500/- on four occasions on 8.3.2000, 30.10.2000, 7.11.2000 and 11.11.2000 respectively from the S.B. a/c. No. 2172/8 of Shri Paramananda Behera in a fraudulent manner by presenting withdrawal slips having forged signatures of the account holder. Such withdrawal slips were sent for examination and opinion of the hand-writing expert along with the admitted signatures of Shri Behera to ascertain whether signatures available on the slips belonged to the account holder Shri Behera. A statement confessing the alleged withdrawal is stated to have been made by the disputant workman in that stage of preliminary enquiry. Basing upon the preliminary report dated 8.7.2001 submitted by the Vigilance Officer of the Management and a reply given by Shri Paramananda Behera to the Management on a query to him, a chare-sheet was issued to the delinquent workman on his alleged act of misconduct and a domestic enquiry was held. Shri R.N. Kolley, Senior Manager, Indian Bank C.E.D.P.-II-BBS was appointed as Enquiry Officer and he was entrusted to conduct the enquiry as per the settled Rules and Procedures. The delinquent workman is stated to have been invited to submit his explanation on the charges issued to him and to attend the departmental enquiry. Departmental enquiry is said to have been conducted in presence of the disputant workman with his active participation and he was given all sorts of opportunities to defend himself in the domestic enquiry. On closure of the enquiry, report was submitted holding workman guilty of misconduct for the alleged withdrawals from the account of Shri Behera. He was inflicted with punishment of dismissal from service after being provided with an opportunity of being heard on the findings of enquiry report.

3. The case of the 2nd party-Union is that the departmental enquiry was not conducted in proper and fair manner with conformity to the principles of natural justice in as much as the findings of the enquiry officer was not based on any legal evidence and the same was perverse. It is the pleading and contention of the 2nd party-Union that no complain was ever received by the Management in writing from any source including from the a/c. holder to carry out any preliminary investigation or enquiry for such alleged drawals. Despite Shri Behera making a statement before the Enquiring Officer that the withdrawal slips were given by him authorizing Shri Sethi to receive the amount and his admission before the enquiry officer that the signatures on the withdrawal slips belonged to him, the findings of the enquiry officer holding the disputant workman guilty of misconduct for such withdrawals are perverse. It is the claim of the 2nd party-Union that though charges were framed on four counts charges on two counts on serious allegations were not established as per the findings of the enquiry officer. The findings being perverse and not based on any legal evidence the enquiry proceeding is to be vitiated and the disputant workman should be reinstated with back wages and other all service benefits being deemed to be in service.

4. The Management has contested the claim of the 2nd party-Union taking a stand that the allegations raised by the disputant workman are not correct. As preliminary investigation revealed that he withdrew an amount of Rs. 23,100/- on different occasions from the savings account of Shri Paramananda Behera, who was his neighbour at Choudwar, without his knowledge and the drawal was made forging his signatures on the withdrawal slips. Departmental enquiry was held. The workman was given opportunity to submit his show cause on the charge-sheet and he was issued with all necessary documents along with the charge-sheet in much advance to the commencement of the domestic enquiry. He was duly intimated about the date and place of holding enquiry, the Presenting Officer and the Enquiry Officer. He was extended opportunities to cross examine the departmental witnesses and to adduce evidence in his defence. He was also provided a copy of the enquiry report and invited to submit his explanation on the findings of the report. Having due regard to the findings and explanation submitted thereon the disciplinary authority has inflicted the punishment of dismissal from service which was most appropriate and just to the misconduct committed by the disputant workman. It has been alleged in the written statement that on earlier occasion the disputant workman was dismissed from service for his similar act of fraudulent drawal made in the year 1984 and he was reinstated in the year 1993 after being acquitted in the criminal case. As such, contention has been advanced by the Management that there is no scope of interference in the findings of the domestic enquiry and punishment inflicted on the disputant workman.

5. On the aforesaid pleadings of the parties following issues have been settled for just and proper adjudication of the reference.

ISSUES

1. Whether the domestic enquiry was fair and proper and charges stand proved?
2. Whether the action of the Management of Indian Bank, Bhubaneswar in terminating the services of Shri Hari sethi, Sub-Staff w.e.f. 14.8.2006 is legal and justified?
3. What relief the workman concerned is entitled to?

6. As no prayer was moved by either of the parties for hearing on the fairness of the departmental enquiry as a preliminary one, hearing on all issues were taken up simultaneously and parties were invited to lead evidence accordingly. In order to establish its case the 2nd party-Union has examined the disputant workman as W.W.-1 and relied upon certain documents like copy of the charge sheet, copy of suspension order, copy of enquiry report, copy of evidence of the workman before the enquiry officer, copy of the letter of Defence Representative, copy of enquiry proceedings, copy of written submission of the workman, copy of the appeal of the workman to appellate authority, copy of withdrawal slip, copy of termination order of the workman marked as Ext.-1 to Ext.-10. Whereas, the Management has filed the entire document of the enquiry file marked as Ext.-A to Ext.-AK in its evidence besides, examining the Presenting Officer as M.W.-1 to refute the stand of the 2nd party-Union.

7. The findings of the domestic enquiry and the punishment of dismissal inflicted on the disputant workman have been challenged mainly on the ground of no materials before the enquiry authority to hold the disputant workman guilty of withdrawing the amount fraudulently from the account of Shri Paramananda Behera without his knowledge. It has also been argued formally that such findings have been arrived at in violation of the principles of natural justice, which is essence of a domestic enquiry. The law requires that domestic enquiry should observe rules of natural justice in the conduct of the enquiry and if they do so, their decision is not liable to be impeached on the ground of violation of natural justice. It is also well settled that in a domestic enquiry the strict and sophisticated of evidence under the Evidence Act is not applicable. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided; it has reasonable nexus and credibility. Merely because the rules of evidence and procedure do not apply to the domestic enquiry, it does not mean that rule of natural justice and fair play and the rules laid down in the Standing Orders are to be ignored. The principles of natural justice requires that (i) the employer shall be informed of the exact charges which he is called upon to meet; (ii) the delinquent employee shall either be furnished with copies of the documents relied upon by the Management or be permitted to have adequate inspection of the same (iii) he should be given an opportunity to explain any material relied on by the Management to prove the charges; (iv) the evidence of the Management witnesses should be recorded in his presence or his representative and he should be given an opportunity to cross examine such witnesses; (iv) the delinquent employee should be given the opportunity to produce his evidence both documentary and oral and lastly he should be furnished with a copy of the enquiry report and permitted to make a presentation to the disciplinary authority against the findings recorded in the enquiry report.

8. Keeping the above principles in view if the pleading and evidence of the parties are examined it is seen, no specific contention has either been raised in the evidence of the disputant workman or in his pleading and argument to the effect as to how principle of natural justice was violated by the enquiry officer while holding the domestic enquiry. It has not been alleged specifically that he was not provided with copy of any document or material likely to be produced before the enquiry officer for which he was prejudiced. Similarly no allegation has been raised contending

that the witnesses of the department were not examined in his presence or he was not given opportunity to cross examine them. On the other hand the oral evidence of the Management as well as the enquiry proceeding file clearly lead to an inference that charge-sheet containing specific allegations was issued to the disputant workman in advance of the commencement of the enquiry. He was also provided either with the copies of the documents or its inspection likely to be produced before the enquiry officer. The enquiry officer had heard him on the charges and allowed him to defend through a co-worker. The witnesses for the department were examined in his presence and he was extended opportunity to cross examine them. Documents of the department were exhibited in his presence. He was also given opportunity to adduce his evidence and to present his submission. He seems to have participated actively in the domestic enquiry. In the above back-drops, it cannot be said that any principle of natural justice was violated in conducting domestic enquiry.

9. The other serious contention of the disputant workman is that the findings of the enquiry officer was perverse in the context of materials laid before him. Admittedly, the Presenting Officer failed to examine the account holder Shri Paramananda Behera in support of the charges of fraudulent withdrawal from his account and Shri Behera being examined on behalf of the workman had stated before the enquiring officer that he issued withdrawal slips and authorized the disputant workman to withdraw and receive the amount from his a/c. He admitted that signatures found in those withdrawal slips belonged to him. In view of such statement of the a/c. holder of Shri Behera it is to be seen whether the findings of the enquiry officer imputing the disputant workman is justified or perverse. Before giving any answer to this issue it is pertinent to mention here that as per the settled principles of law, enunciated by the Hon'ble Apex Court from time to time, the findings of the enquiry officer shall not be based on strict and sophisticated rules of evidence. There is a two folds test of perversity of a finding. The first test is that finding is not supported by any legal evidence at all and the second is that on the basis of materials on record, no reasonable person could have arrived at the finding complained off. The charges in the domestic enquiry is to be proved on pre-ponderence of probability. Coming to the case at hand it is apparent from the pleading and evidence of the parties more particularly, from the domestic enquiry file that departmental witness stated before the enquiry officer that signatures available on withdrawal slips allegedly to have been issued by Shri Behera and admitted signatures of Shri Behera collected in separate sheet were sent for examination and opinion of hand-writing expert. The opinion of hand-writing expert was received during preliminary investigation in which it was opined that signatures available on the withdrawal slips were not tallied with the admitted signature of Shri Behera. Such report was taken into consideration by the enquiry officer and the report is exhibited in the Tribunal being marked as Ext.-L. There is also no serious dispute to the fact that the disputant workman made a confession in writing vide Ext.-G during preliminary investigation and in the said confession he had admitted to have withdrawn the amount from the account of Shri Behera and undertook to make payment of the amount to Shri Behera. There is nothing in the materials adduced before the enquiry officer to suggest that such confession was obtained forcibly from the disputant workman or he was forced in any manner to give such statement in writing The Vigilance Officer of the Bank had also given statement before the enquiry officer that he made a query to Shri Behera about such withdrawal and at that time Shri Behera disclosed him that the disputant workman approached him to save him from departmental action with a promise to refund the amount along with interest. There was no dispute in the enquiry that the amount was received by the disputant workman from the customer Shri Behera. Such materials/evidence being available before the enquiry officer it cannot be said that his finding is perverse on account of the same being based on no legal evidence. In the domestic enquiry, hearsay evidence is not impermissible provided it has reasonable nexus and credibility. Enquiry Officer is not required to go by strict rule of evidence i.e. beyond reasonable doubt as required in criminal case to give its findings. The power given to the Tribunal to reassess the evidence before the enquiry officer has to be judicially and judiciously exercised. It should be exercised in cases where the findings of the enquiry officer are based on no evidence or are so unreasonable that no reasonable man could ever come to it or the decision is so outrageous in its defiance of logic or accepted moral standard that no sensible person could have arrived it or that it is so absurd that one is satisfied that the decision maker must have taken leave of his senses. In the above back-drops I am not inclined to accept the contentions of the 2nd party-Union that the finding of the enquiry officer was perverse. The statement of the account holder is undoubtedly in favour of the disputant workman. At the same time the materials laid before the enquiry officer cannot be said insufficient or no legal evidence to draw an inference against the disputant workman holding him guilty for a fraudulent drawal. It has been consistently held by the Hon'ble Apex Court that the Industrial Tribunal/Labour Court has limited jurisdiction to interfere in the findings of a domestic enquiry and the Tribunal/Court is required to examine whether a prima facie case is made-out against the disputant workman in the domestic enquiry. The Tribunal/Court cannot act as an appellate forum of such domestic enquiry Tribunal to re-assess or reappraise the materials laid before the domestic Tribunal to substitute its own decision/finding against that of the finding of the domestic enquiry. Be that as it may, the findings of the enquiring officer that the amount was withdrawn in a fraudulent manner by the disputant workman cannot be said perverse.

10. Coming to the question of quantum of punishment inflicted on the disputant workman it is worthy to say that he jurisdiction of the Tribunal to interfere with the disciplinary matters and punishment cannot be equated with appellate jurisdiction. The Hon'ble Supreme Court have held in the case of Kailashnath Gupta –versus- E.O. Allahabad Bank AIR 2003 SC 1377 that the power of interference with the quantum of punishment is extremely limited, but when the

relevant factors are not taken note of, which have some bearing on the quantum of punishment, certainly the Tribunal/Court can direct reconsideration or in an appropriate case to shorten litigation, indicate the punishment to be awarded. It is also well settled that unless the punishment is shockingly disproportionate to the quantum of misconduct allegedly committed by the delinquent, the Tribunal/Court should not interfere in the punishment given in a domestic enquiry. The act committed by the disputant workman is undoubtedly a serious misconduct in view of the position held by the disputant workman and in the business of banking transaction. Any lenient view in punishment of such misconduct will give a wrong signal to other wrong doers in such situations. Further, it cannot be over-sighted that the disputant workman faced a criminal trial earlier on similar allegation though, the same has not been brought on the record in spite of being pleaded in the written statement/written argument. Neither the 2nd party-Union nor the disputant workman has refuted such pleading by making a denial to the allegation. In the above facts and circumstances it can be said that the punishment of dismissal as inflicted by the Management for the misconduct of the disputant workman is no manner unjustified, harass or excessive.

11. For the reasons and discussions made above, the 2nd party–Union is not entitled to any relief as claimed in the statement of claim.

12. The reference is answered accordingly.

Dictated & Corrected by me.

B.C. RATH, Presiding Officer

नई दिल्ली, 6 जून, 2017

का.आ. 1429.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार किंगफीशर एअरलाईन्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बेंगलोर के पंचाट (संदर्भ संख्या 19/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.05.2017 को प्राप्त हुआ था।

[सं. एल-11012/10/2010-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 6th June, 2017

S.O. 1429.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of M/s. Kingfisher Airlines Ltd. and their workmen, received by the Central Government on 22.05.2017.

[No. L-11012/10/2010-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT, BANGALORE

DATED : 30th MARCH, 2017

PRESENT : Shri V. S. RAVI, Presiding Officer

C R No. 19/2010

I Party

Sh. T.S. Prithiviraj,
No. 23, 1st B Main Road,
Behind Binny Mills, Ganganagar,
Bangalore – 560032

II Party

The Vice President - HR,
Kingfisher Airlines Limited,
Kingfisher House, Western Express
Highway, Vile Parle (E),
Mumbai - 400099

AWARD

1. The Central Government vide Order No.L-11012/10/2010-IR(CM-I) dated 13.05.2010 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

SCHEDULE

"Whether the action of management of the Kingfisher Airlines Ltd, in terminating the services of Shri. T.S. Prithiviraj, Ex-Technician Engineering Wheels And Brakes Shop, Kingfisher Airlines Ltd, Bangalore, Karnataka with effect from 04.09.2009 is legal and justified? To what relief the Claimant workman is entitled to?"

2. Brief details mentioned in the Claim Statement are as follows:-

The I Party herein is a diploma holder in Mechanical Engineering and he has been selected and appointed for the post of short term Planner (Planning Engineer) by the Air Deccan of 05.06.2007 under an appointment issued by the management of Air Deccan. It is submitted that the I Party has satisfactorily completed his probationary period, as a result of which the management of Air Deccan, confirmed the services of the I Party workman with effect from 21.11.2007 under letter of confirmation dated 21.11.2007. The I Party also states that the Air Deccan has been merged with Kingfisher Airlines Limited in the year 2008 as a result of which all the employees who worked in Air Deccan has been absorbed in Kingfisher Airlines Limited, who is the II Party herein. It is submitted that the II Party vide order dated 01.12.2008 has designated the I Party as Technician in the Engineering Line Maintenance Department based at Bangalore. The I Party also states that, when the I Party has been working, the II Party without there being any justifiable reason, has illegally terminated the services of I Party by an order dated 04.09.2009. The I Party also states that the order of termination passed by the II Party under the facts and circumstances of the case is unjust, illegal, and arbitrary and it is opposed to the rules of natural justice. Thus, the order of termination passed by the II Party is liable to set aside. It is also submitted that the I Party has served the II Party over a period of 3 years and worked in various capacities and he has discharged his duties sincerely, diligently and effectively to the entire satisfaction of his superiors and he has also maintained an unblemished record of service. The I Party states that, absolutely there is no truth in the allegations referred to in the order of termination, for which the I Party has not been issued with any articles of charge and no explanation has been called for and no departmental enquiry has been held before passing an order of termination. The I Party states that, the order of termination passed by the II Party is in utter violation of principles of natural justice. Further, when the I Party has approached the Department head after the receipt of termination letter, the said officer has written a letter of Apology to the II Party on 01.11.2009, by stating that the I Party has not participated in the incident that has taken place on 31.08.2009 and wrong message has been sent. It is submitted that Learned Magistrate after considering the evidence on record, has acquitted the I Party from the criminal charge under a judgment dated 14.05.2010. It is submitted that the I Party is now aged about 51 years and as such he is ineligible to get an alternative employment. That, on account of illegal order of termination effected by the II Party, the I Party and as well as dependents consisting of 4 members have been put to great financial hardship, besides mental agony. The I Party states that the termination of the I Party has hampered his future scope of getting job in other Airlines as well as rendering it impossible to get job in other Airlines, since the I Party in this reference is Aircraft Technician, it would be very difficult for him to render service in other department. Therefore, the I Party workman respectfully prays that this Tribunal may be pleased to

a) Allow the points of reference and consequently set aside the order of termination bearing No .Nil dated 04.09.2009 passed by the II Party, under the facts and circumstances of the case.

b) Direct the II Party Company to reinstate the I Party workmen back into service with continuity of service and all other consequential benefits, including full back wages from the date of termination till the date of reinstatement.

c) Pass any appropriate order/s or directions as this Tribunal may deems fit to grant by considering the facts and circumstances of the case and an order as to costs to meet the ends of justice.

3. Brief details mentioned in the counter statement are as follows:-

The II Party submits that, the I Party Shri. Prithiviraj has been appointed for the post of Shot term Planner (Planning Engineer) on 05.06.2007. Subsequently on 01.12.2008 the I Party has been designated as Technician in the Engineering Line Maintenance Department which is equivalent to the post of Planning Engineer. The II Party submits that, the I Party is not covered under the definition of "Workman" as defined in the I.D. Act 1947. Since, the I Party is not a workman and the dispute raised by the I Party is not an Industrial Dispute, the Court has no jurisdiction to entertain and adjudicate upon the dispute. It is further submitted that the I Party quarrelled with Aircraft Maintenance Engineer (AME) Mr. Tojo Cherian using vulgar language and also tried, physical handling with him. The II Party also states that, I Party has not worked with the discipline of the II Party and also, in accordance with company rules and regulations, and the I Party has indulged in the acts of indiscipline in disorderly and riotous behaviour that obstructed work in the department. Thereby the I Party has been terminated from service by invoking clause K of the appointment letter dated 16.05.2007 by an order dated 04.09.2009. The II Party also states that, it is true that the I Party has been appointed for the post of short term Planner (Planning Engineer) on 05.06.2007. Subsequently on 01.12.2008 the I Party has been designated as Technician in the Engineering Line Maintenance Department which is equivalent to the

post of Planning Engineer. It is also true that the scheduled airlines business of Deccan has absorbed in Kingfisher Airlines Limited. The II Party states that, the contention that the order of termination passed by the II Party is unjust, illegal, arbitrary and opposed to the rules of natural justice is denied as false and baseless. Thereby I Party has been terminated from service by invoking clause K of the appointment letter dated 16.05.2007. Therefore, the management could not conduct inquiry in the conducive and in peaceful atmosphere. The contention of the I Party in regard to police complaint and he has been acquitted from the criminal charges is misleading, false and put to strict proof of the same. The contention of the I Party that he is ineligible to get an alternative employment and it is impossible for him to get a job, in other Airlines since he is Aircraft Technician is baseless and denied as false, as it is reliably learnt that the I Party is gainfully employed.

4. Brief details mentioned in the Rejoinder filed on behalf of I Party are as follows:-

It is submitted that I Party has been working as Aircraft Mechanical Engineer II on the promotional post, with effect from April 2007. But the I Party draw special tools from store or carry tool bag weighing around 15 kg to the aircraft, and when the aircraft lands in the Airport, the I Party shall ask Pilots remark for serviceability of aircraft or any trouble is faced by pilot, then the I Party has to rectify it and if it is covered under the I Party's limit, because the I Party can only rectify minor snag, without using any external test equipment. It is further submitted that in the morning the I Party use to close the door of aircraft, disconnecting the ground power unit and remove auto engine start. It is also submitted that, the nature of duties performed by the I Party is purely technical in nature and at no point of time, the I Party has discharged the duties of Supervisory or any Administrative duties. It is also submitted that after completion of job on Aircraft, the said work has to be entered in ARMS by the certifying staff, and then the print out has to be taken and also submitted to the shift in charge. Therefore, the work done by the I Party is not only technical in nature and it is also clerical in nature. It is submitted that the I Party is neither the appointing authority nor has any disciplinary powers. Thereby, the nature of duties performed by the I Party clearly goes to show that the I Party is a workman under Sec. 2(s) of the Industrial Disputes Act and the dispute referred by the Government of India is maintainable. Therefore, the I Party respectfully prays that this Tribunal may be pleased to allow the claim petition and answer the points of reference in his favour, in the interest of justice and equity.

5. The pertinent point that arises for consideration in the present matter is:-

1) "Whether the action of management of the Kingfisher Airlines Ltd, in terminating the services of Shri. T.S. Prithiviraj, Ex-Technician Engineering Wheels And Brakes Shop, Kingfisher Airlines Ltd, Bangalore, Karnataka with effect from 04.09.2009 is legal and justified?

2) To what relief the Claimant workman is entitled to?"

6. Analysis, Discussion Findings with regard to the above mentioned point:-

On behalf of II Party, MW-1 namely, Tojo Cherian, Assistant Manager of II Party, has been examined and Ex M-1 to Ex M-6 marked. MW-1, has stated in his evidence that the I Party has been designated as Technician in the Engineering Line Maintenance Department which is equivalent to the post of Planning Engineer. MW-1, has also stated that the conduct of the I Party has been not good, of his status as technician and incorrigible and since he has involved with the sensitive operations of the II Party company wherein no misconduct could be tolerated, the II Party lost confidence in the I Party and the continuation of the service of the I Party has not at all desirable and hence the management has been constrained to terminate the services of the I Party. MW-1 also states that, inspite of termination of I Party services, he has tried to forcefully trespass into company premises at wheels and brake shop at Jakkur, by intimidating and threatening staff with dire consequences, and accordingly police complaint has been lodged against the I Party.

7. Further, WW-1, namely the I Party has stated in his evidence and also in the claim statement that he has been appointed for the post of short term Planner (Planning Engineer) by the Air Deccan on 05.06.2007 under an appointment issued by the management of Air Deccan. The WW-1 Party also states that the Air Deccan has been merged with Kingfisher Airlines Limited in the year 2008 as a result of which all the employees who worked in Air Deccan have been absorbed in Kingfisher Airlines Limited, who is the II Party herein. It is submitted by the I Party, that the II Party vide order dated 01.12.2008 has designated the I Party as Technician in the Engineering Line Maintenance Department based at Bangalore. Further, WW-1 also states that, when WW-1 has been working, the II Party without there being any justifiable reason, has illegally terminated the services of I Party by an order dated 04.09.2009. The II Party has also admitted that I Party has been designated as Technician in the Engineering Line Maintenance Department. It has been already ordered that the I Party workman being the Technician, working under the II Party will come under the workman as defined in the I.D. Act 1947 and there is the "Industrial Dispute" as defined under sec. 2(k) of the I.D. Act, 1947. Further, the I Party categorically stated in his claim statement and evidence that the duties of the I Party as per the Termination order is technician and not of managerial or supervisory in nature. Further, the Hon'ble Supreme Court Special Leave to Appeal (Civil) No. 9685/2009 has dismissed by Order

dated 17.08.2009, by upholding the order of the Hon'ble Division Bench of Kerala High Court, in the case of Philip C Abraham Vs Sahara Airlines Ltd., by holding that the Aircraft Engineers as not the 'Workmen'. However the I Party workman has worked only as a Technician and also the I Party as also not discharged the supervisor duties under the II Party and he has attended the Maintenance work as per the directions of the Management and hence, he is a workman under sec 2(s) of the Industrial Dispute Act. Accordingly, it is already held as per the order dated 29.02.2012, that the I Party is a workman.

8. Further, in the Statement of Objection, II Party has stated that the I Party has not worked in accordance with the II Party rules and regulations and I Party indulged in disorderly and riotous behaviour that obstructed work in the department of II Party and hence, I Party has been terminated from service by invoking clause K of the appointment letter dated 16.05.2007 by an Order dated 04.09.2009. However, to establish the indiscipline or the disorderly and riotous behaviour of the I Party, the II Party has not produced any relevant evidence and appropriate records. Hence, it is seen that the submission of the II Party and the Order of termination passed by the II Party is illegal, arbitrary and opposed the rules of natural justice. Further, the II Party has stated that management could not conduct inquiry in the conducive and peaceful atmosphere. The said statement also is not proved by the II Party in an acceptable manner. Further, in the Counter II Party has stated, that the I Party in regard to police complaint has been acquitted from Criminal Charges is misleading. However, the I Party has produced the Judgment passed in CC. No. 32460/2009, and also clearly stated that the Learned Magistrate after considering the evidence on record, has acquitted the I Party from the criminal charges under a judgment dated 14.05.2010, marked as Ex W-16. Further, the I Party has categorically stated that the action of the II Party in terminating the I Party from service amounts to unfair labour practice besides victimization. Furthermore, I Party has clearly stated in the evidence that the termination order passed by the II Party on I Party has hampered the future of the I Party in getting jog in other Airlines and I Party is not gainfully employed elsewhere and the efforts of I Party to get alternative employment is also not materialized.

9. Further, the II Party has filed Diploma certificate and service certificate and course certificates obtained by I Party, as per Ex M-2 to Ex M-6. However, the II Party has not filed any relevant documents to establish the rude behaviour of I Party or appropriate records to establish that II Party could not conduct inquiry in the conducive and in peaceful atmosphere. Further, in the Judgment of Supreme Court of India, AIR 2005 SC 1050, dated 14.02.2005, in the case of Management of Sonepat Cooperative Sugar Mills Ltd. Vs Ajit Singh, it is specifically observed that, "A bare perusal of provisions of section 2(s) of the Industrial Dispute Act, 1947 clearly indicates that a person would come within the purview of the said definition if he: (i) is employed in any industry, and (ii) performs any manual, unskilled, skilled, technical, operational, clerical or supervisory work. Thus, a person who performs one or the other jobs mentioned in the aforementioned provisions only would come within the purview of definition of the workman. The job of a clerk ordinarily implies stereotype work without power of control or dignity or initiative or creativeness. The question as to whether the employee has been performing a clerical work or not is required to be determined upon arriving at a finding as regard the dominant nature thereof. In the present case also on a careful examination of Exhibits, document and pleadings of both parties, it is found that I Party is a workman and the dispute in the present case is an Industrial Dispute as per Sec 2(k). Further, in the Judgment of Supreme Court of India, Before Mr. Justice D.A. Desai, Mr. Justice. O. Chinnappa Reddy and Mr. Justice. A. Varadarajan JJ, Civil Appeal No. 2659 (NL) of 1980, dated 02.09.1983, in the case of S.K. Verma. Vs Mahesh Chandra And Another, it is categorically held that, "When the Central Government in all solemnity, refers an industrial dispute for adjudication, a public sector corporation which is an instrumentality of the Slate should welcome a decision by the Tribunal on merits so as to absolve itself of any charge of being a bad employer or of victimisation etc. and should not attempt to evade decision on merits by raising preliminary objections on rigid technical grounds and drag the workmen from court to court wasting public time and money. Industrial Dispute Act is a legislation intended to bring about peace and harmony between labour and management in an industry and for that purpose, it makes provision for the investigation and settlement of industrial disputes. It is, therefore, necessary to interpret the definitions of 'industry' 'workman', 'industrial dispute'. etc. so as not to whittle down, but to advance the object of the Act." In the present case also, it is found that the Central Government has referred the present dispute in CR 19/2010 in No.L-11012/10/2010-IR(CM-I) dated 13.05.2010, for adjudication. On that ground also, it is found that this Court has to adjudicate the present case to advance the object of the I.D. Act, 1947.

10. Further, in the Judgment of A. I. R. (3S) 1951 Calautta.-28.6..(C. N, 59,) in the case of Rupendra Deb Raikut Vs Ashrumati Debi and others, it is particularly observed that, "Interest of Justice" means promotion or advancement of the cause of justice. Applicant's temperament, failings, interests and circumstances must be considered- Justice should not only be done but should manifestly and undoubtedly seem to be done. After all, the procedure of the Court is to aid the administration of justice and not hamper it. But where in the peculiar circumstances of a case, there is a conflict between the law of procedure and the substantial rights of the parties, the Court or the Judge is justified in ignoring it and it is the duty of the Judge or the Court to ignore the procedure." In this case also it is found that the II Party has not established that the I Party has acted in the rude and violent manner and hence, the II Party could not conduct inquiry in conducive and peaceful atmosphere by producing acceptable and sufficient records and evidences. Further, in the

Judgment of AIR ·1973 SUPREME COURT 1227 (V 60 C 212) Before Mr. Justice I. D. DUA AND C. A and Mr. Justice VAIDIALINGAM. J.J. in Civil Appeal No. 1461 of 1972: in the case of The Workmen of MIs. Firestone Tyre & Rubber Co. of India P. Ltd. Vs. The Management and others, In Civil Appeal No. 1995 of 1972, The Dy. General Manager, Larson & Toubro Ltd., Vs. Sheikh Ismail Mohamed, In Civil Appeal No. 1996 of 1972, The Manager, Larsen & Toubro Ltd. Bombay, Vs. K. P. Ganghare, In Civil Appeal No. 2386 of 1972, MIs. Godfrey Phifltps India Ltd., Vs Manik Vasudeo and others, Civil Appeals Nos. 1461, 1995.1996. 2386 of 1972, D/- 6-3-1973, it is particularly observed that, in construing the provision, of a welfare legislation, Courts should adopt beneficent rule of construction. As far as reasonably possible construction furthering the policy and object of the Act and more beneficial to the employees has to be preferred. Further, it is reported in Lloyds Bank Ltd Vs. Bundy, (1974) 3 All ER 757 that Lord Denning first clearly enunciated his theory of "inequality of bargaining power". He began his discussion on this part of the case by stating (at page 763): "There are cases in our books in which the courts will set aside a contract, or a transfer of property, when the parties have not met on equal terms, when the one is so strong in bargaining power and the other so weak that, as a matter of common fairness, it is not right that the strong should be allowed to push the weak to the wall."

Further, in the Judgment of (1993) 3 Supreme Court Cases 259 BEFORE Mr. Justice KULDIP SINGH, V. Mr. Justice RAMASWAMI AND Mr. Justice K. RAMASWAMY, JJ, in the case of D.K. YADAV Vs J.M.A. INDUSTRIES LTD., in Civil Appeal No. 166(NL) of 1983, dated 07.05.1993, it is particularly observed that, "Hence termination under the Standing order without holding, any domestic enquiry or affording any opportunity to the workman, held, violative of principles of natural Justice, Arts, 14 and 21 of the constitution and S. 25-F of I.D Act. Action/decision, even administrative in nature, which involves civil consequences, must be just, fair, reasonable, non-arbitrary and in consonance with principles of natural justice. Include right to means of livelihood – Rules of procedure for-deprivation of the right must be just, fair and reasonable. Just, fair and reasonable action is an essential inbuilt of natural justice." Further, in the Judgment of ILR 1998 KAR 18 BEFORE Mr. Justice R.P. SETHI, Mr. Justice CJ AND Mr. Justice S.R. BANNURMATH, J in the case of The Management of the Mysore Coffee Processing co- operative Society Ltd Vs Presiding Officer, it is particularly held that, "Where the Management discharges a workman by an Order which is void for want of an Enquiry, the "Doctrine of Relation" back cannot be invoked and in that event the workman would be entitled to the grant of Full back wages from the date of termination of his services till the date of award of the Labour Court." For the above mentioned various reasons and grounds, it is held that the I Party is entitled to get relief, and the point is answered in favour of the I Party. Accordingly, the following award is passed:-

AWARD

The action of the Management of the Kingfisher Airlines Ltd. is not justified in terminating the services of Shri. T.S. Prithiviraj, Ex-Technician W.e.f 04.09.2009 and II Party is directed to reinstate/Give all monetary legal benefits and also payment of full back wages from the date of termination, namely, 04.09.2009 and all other consequential benefits to I Party, and the present reference is answered in favour of I party, without cost for the above mentioned peculiar facts and circumstances.

Dictated, transcribed, corrected and signed by me on 30th March, 2017)

V. S. RAVI, Presiding Officer

List of Witness on the side of I Party:

WW1	Sh. T.S. Prithiviraj, I Party/ Workman

List of Witness on the side of II Party:

MW1	Sh. Amit Arun Gursale, II Party/ Senior Manager

Exhibit marked on behalf of I Party:

Exhibits	Date	Description of Document
Ex W-1	16.05.2007	Appointment Letter
Ex W-2	18.05.2007	Annexure-1
Ex W-3	21.05.2007	Letter issued by Director Deccan Aviation Ltd.

Ex W-4	-	Confirmation Appraisal Form
Ex W-5	01.12.2008	Letter issued by II Party Management
Ex W-6	-	Annexure - A
Ex W-7	21.11.2007	Letter of Confirmation
Ex W-8	04.09.2009	Letter issued by II Party Management
Ex W-9	-	Certified Copy of Endorsement issued by Amruthahalli
Ex W-10	23.09.2009	Certified Copy of Endorsement issued by Amruthahalli Police Station
Ex W-11	01.11.2009	Letter of Apology of G. Lingoji Rao
Ex W-12	July 2008	Salary details of I Party
Ex W-13	12.10.2009	Complaint Letter to Labour Commissioner
Ex W-14	09.12.2009	Objection submitted by II Party
Ex W-15	27.01.2010	Report by Labour Commissioner
Ex W-16	14.05.2010	Certified copy of Judgment passed by the Chief Metropolitan Magistrate, Bangalore

Exhibit marked on behalf of II Party:

Exhibits	**Date**	**Description of Document**
Ex M-1	-	Resume of I Party
Ex M-2	1979	Certificate of Diploma in Mechanical Engineering
Ex M-3	02.05.1996	EAD 777 General Familiarization Course Certificate
Ex M-4	1991	General Familiarization Course Certificate
Ex M-5	1996	Ramp, Transit & Line Unit Replacement course certificate
Ex M-6	1991	Certificate of Competence

नई दिल्ली, 6 जून, 2017

का.आ. 1430.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, बीएसएनएल, फरीदाबाद एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. II, दिल्ली के पंचाट (संदर्भ संख्या 13/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.05.2017 को प्राप्त हुआ था।

[सं. एल-40012/66/2011-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th June, 2017

S.O. 1430.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 13/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, BSNL, Faridabad and their workman, which was received by the Central Government on 18.05.2017.

[No. L-40012/66/2011-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO-II, KARKARDOOMA COURT COMPLEX, DELHI-110032

I.D. No. 13/2012

Sh. Ghan Shyam,
S/o Sh. Barkhu,
R/o:- H.No.-227, Gali No-2,
Rahul Colony, NIT, Faridabad

Versus

The General Manager,
BSNL, Sector-15,
Faridabad

NO DISPUTE AWARD

The Central Government in the Ministry of Labour vide Letter No. L-40012/66/2011-IR(DU) Dated 05.12.2011 referred the following Industrial Dispute to this Tribunal for adjudication:-

"Whether action of the management of BSNL in terminating the service of Sh. Ghan Shyan S/o Sh. Barkhu, Ex-cable jointer, w.e.f. 23.08.2010 is legal & justified? What relief the workman is entitled to?"

On 09.01.2012 reference was received in this Tribunal. Which was register as I.D. No. 13/2012 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

On 13.07.2012 workman filed his claim statement. Fixed 29.08.2012 for filing of written statement.

On 13.03.2013 management filed written statement. Hence fixed 22.05.2013 for framing of issues.

On 22.05.2013 on perusal of pleadings, following issues were framed:-

(1) Whether there existed relationship of employer and employee between the parties?
(2) As in terms of reference.

No other issues were made out.

Fixed 30.07.2013 for workman evidence.

Several opportunities given to workman to adduce his evidence but he failed to adduce his evidence. In want evidence of workman there is no need to management to adduce its evidence.

So on 03.05.2017 I reserved the Award.

I perused the record which shows that workman in support of his case adduced no evidence.

In want of which only "No dispute Award" award can be passed.

Which is accordingly passed.

Dated : 04.05.2017

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 6 जून, 2017

का.आ. 1431.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, बीएसएनएल, फरीदाबाद एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. II, दिल्ली के पंचाट (संदर्भ संख्या 29/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.05.2017 को प्राप्त हुआ था।

[सं. एल-40012/72/2011-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th June, 2017

S.O. 1431.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 29/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, BSNL, Faridabad and their workman, which was received by the Central Government on 18.05.2017.

[No. L-40012/72/2011-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO-II, KARKARDOOMA COURT COMPLEX, DELHI-110032

I.D. No. 29/2012

Sh. Ram Anchal,
S/o Sh. Ram Dass,
R/o:- H.No.-244, Gali No-2,
Rahul Colony, NIT, Faridabad

Versus

The General Manager,
BSNL, Sector-15,
Faridabad

NO DISPUTE AWARD

The Central Government in the Ministry of Labour vide Letter No. L-40012/72/2011-IR(DU) Dated 02.12.2011 referred the following Industrial Dispute to this Tribunal for adjudication:-

"Whether action of the management of BSNL in terminating the service of Sh. Ram Anchal S/o Sh. Ram Dass, Ex-cable jointer, w.e.f. 23.08.2010 is legal & justified? What relief the workman is entitled to?"

On 20.01.2012 reference was received in this Tribunal. Which was register as I.D. No. 29/2012 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

On 29.08.2012 workman filed his claim statement. Fixed 01.10.2012 for filing of written statement.

On 13.03.2013 management filed written statement. Hence fixed 22.05.2013 for framing of issues.

On 22.05.2013 on perusal of pleadings, following issues were framed:-

(1) Whether there existed relationship of employer and employee between the parties?

(2) As in terms of reference.

No other issues were made out.

Fixed 30.07.2013 for workman evidence.

Several opportunities given to workman to adduce his evidence but he failed to adduce his evidence. In want evidence of workman there is no need to management to adduce its evidence.

So on 03.05.2017 I reserved the Award.

I perused the record which shows that workman in support of his case adduced no evidence.

In want of which only "No dispute Award" award can be passed.

Which is accordingly passed.

Dated : 04.05.2017

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 6 जून, 2017

का.आ. 1432.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, बीएसएनएल, फरीदाबाद एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. II, दिल्ली के पंचाट (संदर्भ संख्या 36/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.05.2017 को प्राप्त हुआ था।

[सं. एल-40012/79/2011-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th June, 2017

S.O. 1432.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 36/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, BSNL, Faridabad and their workman, which was received by the Central Government on 18.05.2017.

[No. L-40012/79/2011-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO-II, KARKARDOOMA COURT COMPLEX, DELHI-110032

I.D. No. 36/2012

Sh. Praveen Kumar,
S/o Sh. Kishan Lal,
H.No. 130/2, Raghbir Colony,
Rahul Colony, Near Zakir Hussain Arra machine,
Gali No. 2, Ballabhgarh, Faridabad

Versus

The General Manager,
BSNL, Sector-15,
Faridabad

NO DISPUTE AWARD

The Central Government in the Ministry of Labour vide Letter No. L-40012/79/2011-IR(DU) Dated 05.12.2011 referred the following Industrial Dispute to this Tribunal for adjudication:-

"Whether action of the management of BSNL in terminating the service of Sh. Praveen Kumar S/o Sh. Kishan Lal, Ex-cable jointer, w.e.f. 23.08.2010 is legal & justified? What relief the workman is entitled to?"

On 20.01.2012 reference was received in this Tribunal. Which was register as I.D. No. 36/2012 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

On 18.12.2012 workman filed his claim statement. Fixed 13.03.2013 for filing of written statement.

On 13.03.2013 management filed written statement. Hence fixed 22.05.2013 for framing of issues.

On 22.05.2013 on perusal of pleadings, following issues were framed:-

(1) Whether there existed relationship of employer and employee between the parties?

(2) As in terms of reference.

No other issues were made out.

Fixed 30.07.2013 for workman evidence.

Several opportunities given to workman to adduce his evidence but he failed to adduce his evidence. In want evidence of workman there is no need to management to adduce its evidence.

So on 03.05.2017 I reserved the Award.

I perused the record which shows that workman in support of his case adduced no evidence.

In want of which only "No dispute Award" award can be passed.

Which is accordingly passed.

Dated : 04.05.2017

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 6 जून, 2017

का.आ. 1433.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, बीएसएनएल, फरीदाबाद एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. II, दिल्ली के पंचाट (संदर्भ संख्या 59/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.05.2017 को प्राप्त हुआ था।

[सं. एल-40012/46/2011-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th June, 2017

S.O. 1433.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 59/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, BSNL, Faridabad and their workman, which was received by the Central Government on 18.05.2017.

[No. L-40012/46/2011-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO-II, KARKARDOOMA COURT COMPLEX, DELHI-110032

I.D. No. 59/2012

Sh. Vishwanath,
S/o Sh. Durai,
Rahul Colony, NIT, Faridabad

Versus

The General Manager,
BSNL, Sector-15,
Faridabad

NO DISPUTE AWARD

The Central Government in the Ministry of Labour vide Letter No. L-40012/46/2011-IR(DU) Dated 30.01.2012 referred the following Industrial Dispute to this Tribunal for adjudication:-

"Whether action of the management of BSNL, Faridabad in terminating the service of Sh. Vishwanath S/o Sh. Durai, Ex-cable jointer, w.e.f. 23.08.2010 is legal & justified? What relief the workman is entitled to?"

On 14.02.2012 reference was received in this Tribunal. Which was register as I.D. No. 59/2012 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

On 20.07.2012 workman filed his claim statement. Fixed 07.09.2012 for filing of written statement.

On 01.05.2013 management filed written statement. No need to formulate issue other than reference. Hence fixed 17.07.2013 for evidence of claimant.

On 20.11.2013 workman tendered his affidavit in its evidence and his cross examination is deferred to 22.01.2014.

In spite of several opportunities workman was not turning up in his cross examination. Hence evidence of workman was closed on 03.05.2017. In want evidence of workman there is no need to management to adduce its evidence.

So on 03.05.2017 I reserved the Award.

I perused the record which shows that workman in support of his case adduced no evidence.

In want of which only "No dispute Award" award can be passed.

Which is accordingly passed.

Dated : 04.05.2017

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 6 जून, 2017

का.आ. 1434.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, बीएसएनएल, फरीदाबाद एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. II, दिल्ली के पंचाट (संदर्भ संख्या 64/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.05.2017 को प्राप्त हुआ था।

[सं. एल-40012/40/2011-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th June, 2017

S.O. 1434.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 64/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, BSNL, Faridabad and their workman, which was received by the Central Government on 18.05.2017.

[No. L-40012/40/2011-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO-II, KARKARDOOMA COURT COMPLEX, DELHI-110032

I.D. No. 64/2012

Sh. Inder Pal,
S/o Sh. Babu Lal,
R/o:- Gali No. 1, Rahul Colony,
NIT, Faridabad

Versus

The General Manager,
BSNL, Sector-15,
Faridabad

NO DISPUTE AWARD

The Central Government in the Ministry of Labour vide Letter No. L-40012/40/2011-IR(DU) Dated 25.01.2012 referred the following Industrial Dispute to this Tribunal for adjudication:-

"Whether action of the management of BSNL, Faridabad in terminating the service of Sh. Inder Pal S/o Sh. Babu Lal, Ex-cable jointer, w.e.f. 23.08.2010 is legal & justified? What relief the workman is entitled to?"

On 14.02.2012 reference was received in this Tribunal. Which was register as I.D. No. 64/2012 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

On 20.07.2012 workman filed his claim statement. Fixed 07.09.2012 for filing of written statement.

On 01.05.2013 management filed written statement. No need to formulate issue other than reference. Hence fixed 17.07.2013 for evidence of claimant.

Several opportunities given to workman to adduce his evidence but he failed to adduce his evidence. In want evidence of workman there is no need to management to adduce its evidence.

So on 03.05.2017 I reserved the Award.

I perused the record which shows that workman in support of his case adduced no evidence.

In want of which only "No dispute Award" award can be passed.

Which is accordingly passed.

Dated : 04.05.2017

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 6 जून, 2017

का.आ. 1435.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, बीएसएनएल, फरीदाबाद एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. II, दिल्ली के पंचाट (संदर्भ संख्या 65/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.05.2017 को प्राप्त हुआ था।

[सं. एल-40012/41/2011-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th June, 2017

S.O. 1435.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 65/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, BSNL, Faridabad and their workman, which was received by the Central Government on 18.05.2017.

[No. L-40012/41/2011-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO-II, KARKARDOOMA COURT COMPLEX, DELHI-110032

I.D. No. 65/2012

Sh. Ved Pal,
S/o Sh. Jagsaran,
R/o:- Village-Dayalpur,
Distt. Ballabhgarh
Faridabad

Versus

The General Manager,
BSNL, Sector-15,
Faridabad

NO DISPUTE AWARD

The Central Government in the Ministry of Labour vide Letter No. L-40012/41/2011-IR(DU) Dated 25.01.2012 referred the following Industrial Dispute to this Tribunal for adjudication:-

"Whether action of the management of BSNL, Faridabad in terminating the service of Sh. Ved Pal S/o Sh. Jagsaran, Ex-cable jointer, w.e.f. 23.08.2010 is legal & justified? What relief the workman is entitled to?"

On 14.02.2012 reference was received in this Tribunal. Which was register as I.D. No. 65/2012 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

On 27.07.2012 workman filed his claim statement. Fixed 07.09.2012 for filing of written statement.

On 01.05.2013 management filed written statement. No need to formulate issue other than reference. Hence fixed 26.06.2013 for evidence of claimant.

Several opportunities given to workman to adduce his evidence but he failed to adduce his evidence. In want evidence of workman there is no need to management to adduce its evidence.

So on 03.05.2017 I reserved the Award.

I perused the record which shows that workman in support of his case adduced no evidence.

In want of which only "No dispute Award" award can be passed.

Which is accordingly passed.

Dated : 04.05.2017

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 6 जून, 2017

का.आ. 1436.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, बीएसएनएल, फरीदाबाद एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. II, दिल्ली के पंचाट (संदर्भ संख्या 71/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.05.2017 को प्राप्त हुआ था।

[सं. एल-40012/48/2011-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th June, 2017

S.O. 1436.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 71/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, BSNL, Faridabad and their workman, which was received by the Central Government on 18.05.2017.

[No. L-40012/48/2011-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO-II, KARKARDOOMA COURT COMPLEX, DELHI-110032

I.D. No. 71/2012

Sh. Manoj Kumar,
S/o Sh. Mithai Lal,
R/o:- H.No.-241, Gali No. 2,
Rahul Colony, NIT, Faridabad

Versus

The General Manager,
BSNL, Sector-15,
Faridabad

NO DISPUTE AWARD

The Central Government in the Ministry of Labour vide Letter No. L-40012/48/2011-IR(DU) Dated 30.01.2012 referred the following Industrial Dispute to this Tribunal for adjudication:-

"Whether action of the management of BSNL, Faridabad in terminating the service of Sh. Manoj Kumar S/o Sh. Mithai Lal, Ex-cable jointer, w.e.f. 23.08.2010 is legal & justified? What relief the workman is entitled to?"

On 14.02.2012 reference was received in this Tribunal. Which was register as I.D. No. 71/2012 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

On 20.07.2012 workman filed his claim statement. Fixed 07.09.2012 for filing of written statement.

On 01.05.2013 management filed written statement. No need to formulate issue other than reference. Hence fixed 17.07.2013 for evidence of claimant.

Several opportunities given to workman to adduce his evidence but he failed to adduce his evidence. In want evidence of workman there is no need to management to adduce its evidence.

So on 03.05.2017 I reserved the Award.

I perused the record which shows that workman in support of his case adduced no evidence.

In want of which only "No dispute Award" award can be passed.

Which is accordingly passed.

Dated : 04.05.2017

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 6 जून, 2017

का.आ. 1437.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार नियंत्रक जनरल, पेटेंट और डिजाइन व्यापार चिह्न, बौद्धिक संपदा भवन, नई दिल्ली एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. I, दिल्ली के पंचाट (संदर्भ संख्या 144/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.05.2017 को प्राप्त हुआ था।

[सं. एल-42012/74/2013-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th June, 2017

S.O. 1437.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 144/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. I, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the Controller General, Patent and Design Trade Marks, Baudhik Sampada Bhawan, New Delhi and their workman, which was received by the Central Government on 05.05.2017.

[No. L-42012/74/2013-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

I.D. No. 144/2013

Shri Om Prakash Sah,
S/o Shri Chhappan Sah,
R/o H.No. A-141, Gali No. 4,
Mahavir Enclave, Part II,
New Delhi …Workman

Versus

The Controller General
Patent & Design Trade Marks,
Through Assistant Controller of Patent
& Design, Patent Office,
Baudhik Sampada Bhawan,
Dwarka, New Delhi-110078 …Management

AWARD

A reference was received from Ministry of Labour, Government of India vide letter No.L-42012/74/2013-IR(DU) dated 28.10.2013 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) by this Tribunal for adjudication of an industrial dispute, terms of which are as under:

> 'Whether the action of the management of Controller General Patent & Design Trade Marks in terminating the services of Shri Om Prakash Sah, S/o Shri Chhappam Sah, ex-labour with effect from 31.03.2009 is justified or not? IF not, what relief will be given to the workman and from which date?'

2. Claim statement was filed by Shri Om Prakash Sah (in short the claimant) pleading that he was engaged as a casual labour/daily wager by the Controller General, Patents & Design Trade Marks (in short the management) on 10.08.2007 through Employment Exchange, North East District, Directorate of Employment, Government of India, New Delhi. He initially worked up to 11.12.2007. He was again engaged on 17.12.2007. With an ulterior motive, the management gave break on 11.12.2007 and again engaged him on 17.12.2007. He worked till 31.03.2009. He was regular, sincere, obedient and hardworking in his duties. He has completed 240 days continuous service with the management. He was denied salary for the months of December 2008, January 2009, February 2009 and March 2009. Instead of paying his legal dues, he was prevented from performing his duties after 31.03.2009.

3. On 01/02.04.2009, a representation was made to the management to allow him to rejoin duties since the person deployed in his place was doing similar duties. However, the management failed to consider his case. Thereafter, under wrong legal advice, an OA No.849/2010 was filed before the Central Administrative Tribunal (in short the CAT) which was withdrawn on 23.05.2012. No notice for termination of his service was given. Action of termination of his services is illegal and uncalled for. He is unemployed since the date of termination of his service. He seeks reinstatement in service with continuity and full back wages.

4. Claim was demurred by the management pleading that it is a statutory body under the provisions of the Indian Patents Act, 1970 created for implementing provisions of the aforesaid Act, for granting patents on new non-obvious inventions. The management is a subordinate office of the Ministry of Commerce & Industries, Government of India, New Delhi. The management employed certain persons through employment exchange to carry out job of casual/ intermittent nature. The management performs sovereign function and as such does not carry out activities which can be considered as trade or business. No activity, related to production, distribution or supply of goods or services meant for satisfying for human wants, is carried out and hence it is not an industry. It is also pleaded that the claimant is not a workman under the provisions of the Act. No appointment letter or identity card was issued to the claimant. He was engaged for casual work, which was to be performed intermittently. Such casual workers/labourers are neither holders of civil post nor appointed to any sanctioned regular post through proper procedure. They are neither entitled for any pay or perks at par with holder of a civil post nor can claim continuation of such engagement. Further as per policy of the Government of India, manpower for casual job is now outsourced on contract basis through a private outsourcing agency. Certificate issued by the management clearly indicates that the claimant worked as a daily wager. He was called for receiving his outstanding payment, which he refused to accept. Hence it was deposited to Government accounts vide challan no.POD/405/RC dated 29.09.2009 after completion of 90 days as per Receipt and Payment Rules. Subsequently cheques for Rs.9,185.00 for the period December 2008 to February 2009 and Cheque for Rs.3,841.00 for the period March 2009 has been issued to him in November 2012.

5. The management pleads that the claimant moved an application before the CAT seeking relief of reinstatement in service, which application was dismissed vide order 21.4.2010. He again filed an application, which was dismissed as withdrawn on 23.5.2012. The order passed by the CAT operates as resjudicata. In view of these facts, claimant is not entitled to any relief. His claim is liable to be dismissed, pleads the management.

6. On pleadings of the parties, vide order dated 06.02.2014, my learned predecessor was of the view that no other issue, than those referred for adjudication by the appropriate Government is made out.

7. To discharge onus resting on him, the claimant examined himself as WW1 and tendered in evidence his affidavit Ex.WW1/A. He also tendered in evidence document Ex.WW1/1. The management filed affidavit of Ms.Suresh

Singhal to substantiate its case. However, in spite of affording opportunities, none appeared on behalf of the claimant, hence ex-parte evidence of Ms. Singhal was recorded.

8. Arguments were advanced at the bar by Shri Atul Bhardwaj, authorized representative of the management.

9. It is pertinent to note that the claimant has not appeared before this Tribunal after 01.08.2016 and no cross-examination of the management witness was done on behalf of the claimant.

10. It has been held in the case of Batala Co-operative Sugar Mills Ltd. vs. Sowaran Singh (2005) 8 SCC 481 that the onus to prove that the claimant has worked continuously for 240 days in a calendar year lies on the claimant and it is for the workman to adduce evidence, apart from examining himself or filing affidavit to prove the said factum of working for 240 days continuously. Such evidence may be in the form of receipt of salary, attendance register which can indicate the number of days during which the claimant has worked, record of his appointment etc. Since in the case on hand, the claimant has not cared to summon any record from the management so as to prove the number of working days in a calendar year, as such this Tribunal is of the view that the claimant has failed to discharge onus of proving that he has worked for 240 days continuously in a calendar year prior to his termination. The very fact that the claimant has not turned up to cross-examine the witness of the management is also suggestive of the fact that the claimant is not interested in adjudication of the controversy on merits nor has he any interest in the outcome of the proceedings. Management has specifically alleged in para 6 of the affidavit that he was engaged on daily wages and work performed by the claimant is of intermittent nature. In para 6 of the affidavit, they have also mentioned the period during which the claimant has performed duties. Counting of days, as mentioned in para 6 of the affidavit, nowhere shows that the claimant has even worked anywhere near 24- days in a calendar year. In such a situation, there is no question of violation of section 25-F and 25G of the Act as the number of working days put in by the claimant has not been proved by him.

11. As a sequel to my above discussion, this Tribunal is of the opinion that action of the management in terminating the services of Shri Om Prakash, claimant herein, is justified and the claimant is not entitled for any relief. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : April 28, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 6 जून, 2017

का.आ. 1438.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, राष्ट्रीय उत्पादकता परिषद, नई दिल्ली एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. I, दिल्ली के पंचाट (संदर्भ संख्या 57/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.05.2017 को प्राप्त हुआ था।

[सं. एल-42012/43/2013-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th June, 2017

S.O. 1438.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 57/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. I, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the Director, National Productivity Council, New Delhi and their workman, which was received by the Central Government on 05.05.2017.

[No. L-42012/43/2013-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

I.D. No. 57/2013

Shri Pradeep Kumar, S/o Shri Genda Lal,
R/o House No.843, Gali No.19, Part IV,
Circular Road, Sonia Vihar,
Delhi – 110 094 …Workman

Versus

The Director,
National Productivity Council,
Utpadakta Bhawan, 5-6 Institutional Area,
Lodhi Road,
New Delhi 110 - 003 …Management

AWARD

This case was initially filed under Section 2-A of the Industrial Disputes Act, 1947 (in short the Act) by Shri Pradeep Kumar, the claimant, with the averments that he joined the management on 12.08.1997 at its Head Office, New Delhi as mali on daily basis, though his work was primarily of mali-cum-peon. Later on, services of the claimant was terminated/retrenched on 31.10.2010 without any lawful reason. This was challenged by the claimant, wherein he has prayed that his termination be declared to be illegal and he be reinstated with back wages.

2. After filling of the claim under Section 2-A of the Act, reference was received from the appropriate Government vide letter No.L-42012/43/2013-IR(DU) dated 18.07.2013 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of the dispute, terms of which are as under:

> 'Whether the action of the management of National Productivity Council in terminating the services of Shri Pradeep Kumar S/o Shri Genda Lal with effect from 01.11.2010 is fair and legal? To what relief the workman concerned is entitled to?

3. It was ordered by my learned predecessor vide order dated 26.08.2013 that reference case be tagged with the case filed under Section 2-A of the Act, i.e. ID No.57/2013.

4. Management has contested the case of the claimant by filing written statement wherein management has taken preliminary objections of maintainability, jurisdiction etc. On merits, management has denied most of the averments contained in the statement of claim. It has been denied that the claimant was engaged as mali-cum-peon but was doing the work of mali.

5. Against this factual background, this Tribunal on the basis of pleadings of the parties, vide order dated 26.08.2017 framed the following issues:

(1) Whether management is an industry within the meaning of section 2(j) of the Industrial Disputes Act, 1947?

(2) Whether claimant rendered continuous service of more than 240 days in preceding 12 months from the date of his termination?

(3) Whether claimant is entitled to relief of reinstatement in the service of the management?

6. Claimant, in support of his case, examined himself as WW1 and tendered his affidavit Ex.WW1/A. He also tendered in evidence documents Ex.WW1/1 to Ex.WW1/38.

7. During the course of cross-examination of the claimant by the management, an attempt was made by this Tribunal for conciliation between the parties and management made an offer that the management is ready and willing to consider the claim of the claimant and matter was discussed by the official of the management with their higher authorities, who took a favourable view of the matter. Finally, amicable settlement was arrived at between the parties. Claimant accepted the offer that he is ready and willing to join the management as a daily/casual labour and his statement was recorded in the Lok Adalat on 18.04.2017. He was also given letter dated 24.03.2017 by the management, which is Exhibit C-1. It is clear from the above letter that the claimant Shri Pradeep Kukar was ordered to be engaged as a daily wager/casual worker. Statement of Shri D.D. Lahari, Legal Officer on behalf of the management was also recorded.

8. In view of the statements made by the claimant as well as Shri D.D. Lahiri, Legal Officer of the management, case was finally settled between the parties in the Lok Adalat on 18.04.2017. Since the claimant has joined services with the management, no controversy survives between the parties. Letter Exhibit C-1 and the statements made by the claimant and Shri D.D. Lahari, Legal Officer on behalf of the management shall form integral part of the award. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : April 28, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 6 जून, 2017

का.आ. 1439.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आयुक्त, एमसीडी (उत्तर), नई दिल्ली एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. I, दिल्ली के पंचाट (संदर्भ संख्या 29/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.05.2017 को प्राप्त हुआ था।

[सं. एल-42011/114/2014-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th June, 2017

S.O. 1439.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 29/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. I, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the Commissioner, MCD (North), New Delhi and their workman, which was received by the Central Government on 05.05.2017.

[No. L-42011/114/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

I.D. No. 29/2015

Smt. Bimla Devi,
C/o MCD General Mazdoor Union,
Room No.95, Barrack No.1/10,
Jam Nagar House,
New Delhi-110 011 …Workman

Versus

The Commissioner,
MCD (North), Civic Centre, Minto Road,
New Delhi-110 002 …Management

AWARD

A reference was received from the appropriate Government vide letter No.L-42011/114/2014-IR(DU) dated 05.01.2015 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

> 'Whether Smt. Bimla W/o late Shri Om Prakash, a Malaria Beldar on contractual basis (expired on 4th October, 2008 while on duty) entitled to any kind of compassionate appointment?'

2. Both parties were put to notice and claimant Ms. Bimla Devi filed statement of claim with the averments that she is the widow of Shri Om Prakash who was engaged as malaria beldar, now filed worker, and was working under anti malaria operations and was posted at Civil Lines Zone. Her husband expired on 04.10.2008 during office hours, leaving behind the claimant herein alongwith five children, whose particulars are as under:

S.No.	Name	Relation with deceased	Year of Birth	Matital Status
1	Smt. Bimla	Wife	1970	Widow
2	Meenu	Daughter	1992	Now Married
3	Heera Lal	Son	1994	Unmarried
4	Panna Lal	Son	1996	Unmarried
5	Manju	Daughter	1998	Unmarried
6.	Anju	Daughter	1999	Unmarried

3. Family of late Shri Om Prakash is striving hard and is not in a position to make both ends meet in a metropolitan city like Delhi.

4. It is the case of the claimant that as per joint seniority list prepared by the management as per the order dated 17.12.1987 passed by Hon'ble Justice P.K. Behari of Hon'ble High Court of Delhi, her husband, Shri Om Prakash was arbitrarily and unlawfully appointed as malaria beldar on contractual basis instead of appointing him as a regular malaria beldar. Name of Shri Om Prakash appears at serial No.216 of the list prepared by the management vide circular No. AMO/HQ/2009/06 dated 01.04.2009 for regularization. The management of MCD has been providing compassionate appointment to the wards of the deceased employees even on regular post as well as daily wagers who expired in harness. However, management refused to grant compassionate appointment to the claimant herein by overlooking the numerous decisions of the Hon'ble Apex Court, particular the one in 2004 (4) SLT 674 and 2003 (t) SCC 511:

> 'The family of the deceased was left in penury and without any means of livelihood. Applicant herein alongwith her five minor children and aged mother-in-law was living from hand to mouth. The applicant within one month from the date of death of her husband, submitted her application on 03.09.2001 vide Diary No.22 which was followed by numerous reminders. The respondents after considering all the facts and poor financial conditions of the family, recommended the case of applicant for appointment on compassionate grounds.'

5. In the present case, management refused to provide compassionate appointment to the widow of late Shri Om Prakash on the ground that his services were not regularized and he was a daily rated worker. It is also alleged that juniors to late Shri Om Prakash were regularized after his death as malaria field worker. The claimant has also made reference to the judgement of the Hon'ble Apex Court in the case to Devender Singh AIR 2011 SC 2532 wherein part time contractual daily water, temporary employees etc. are said to be duly covered by the definition of 'workman' under the Act. Finally, prayer has been made for appointment of the claimant as malaria beldar or any equivalent post of Group D category.

6. Claim was resisted by the management who filed reply thereto taking preliminary objections inter alia of demand notice not being served upon the management, present dispute not being covered by industrial dispute, non-espousal by majority number of workmen in the establishment of the management under the law, claimant not being covered under the definition of 'workman' and reference being made in a mechanical manner. Further MCD Mazdoor Union has no locus standi to raise the dispute. Moreover, deceased Shri Om Prakash was a malaria beldar on contractual basis and there is no relationship between the parties of master and servant. On merits management denied most of the averments. However the factum of engagement of the claimant was duly admitted as the same is also a matter of record. He was engaged as malaria beldar on contractual basis. It has been alleged that the claimant is not entitled to relief of compassionate appointment as she is not covered by the existing norms.

7. Claimant filed rejoinder to the reply filed by the management and reasserted the stand taking in the statement of claim.

8. Against this factual background, this Tribunal, on the basis of pleadings of the parties vide order dated 30.10.2015 framed the following issues:

(i) Whether claimant is entitled for compassionate appointment, as alleged?

(ii) Whether demand notice was not sent, as alleged?

(iii) Whether the case has not been espoused by the union or considerable number of workmen in the establishment of the management?

(iv) Whether claimant is a workman within the meaning of section 2(s) of the Industrial Disputes Act, 1947?

(v) Whether the claim filed is barred by time?

(vi) Whether claim filed is not legally maintainable, as alleged?

9. Both parties adduced evidence in support of the stand taken in their respective pleadings. Claimant in order to prove her case examined herself as WW1 and Shri B.K. Prasad as WW2 and tendered in evidence their affidavits Ex.WW1/A and Ex.WW2/A respectively. Shri B.K. Prasad also tendered in evidence documents Ex.WW2/1 to Ex.WW2/4. Management, in order to rebut the case of the claimant, examined Shri S.C. Arun, Additional MHO as MW1, who tendered in evidence his affidavit Ex.MW1/A and documents Ex.MW1/1 and Ex.MW1/2.

10. I have heard Shri B.K. Prasad, A/R for the claimant and Shri Harbans Kaushal, A/R for the management.

Issue No.iv & (vi)

11. Both these issues are legal in nature and can be conveniently disposed of. The first contention of the management is to the effect that the case of the claimant herein is not covered within the definition of 'workman' as defined under Section 2(s) of the Act. It is clear from the pleadings of the parties that Shri Om Prakash, husband of the claimant herein was engaged as malaria beldar by the management. Contention of the management primarily is to the effect that compassionate appointment as per norms is given only to the legal heirs of regular employees and not to casual or daily wager employees who are engaged temporarily on contractual basis. Learned A/R appearing on behalf of the management invited the attention of the Court to Ex.MW1/2 which deals with the compassionate appointment to the widows/sons/daughters of the deceased Government servants etc. It is clearly provided in the scheme of compassionate appointment that for the purpose of these instructions, Government servant means Government servants appointed on regular basis and not the ones working on daily basis or casual or apprentice or ad hoc basis or contract or re-employment basis.

12. Admittedly, the present case is for compassionate appointment filed by the claimant Ms. Bimla Devi, whose husband Shri Om Prakash was a workman Even if it is held that husband of the claimant was a daily water or a contractual workman or casual employee engaged by the management, same would also fall within the definition of workman as held in Devender Singh Vs. Municipal Council Sanaur (AIR (2011), wherein it was observed as under:

> 'The source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s)of the Act.
>
> The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only a person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.

13. In Municipal Employees Union case (supra), it was held as under:

> "6. The expression 'Industrial dispute' is defined in Section 2(k) of the Industrial Disputes Act which is extracted below:
>
> > (k) 'Industrial dispute' means any dispute or difference between employers and employees or between employers and workman or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person:
>
> From the above definition of 'industrial dispute,' it is clear that even a dispute between an employer and his workmen which is connected with the non-employment of any person can be an industrial dispute. The beneficiary of the claim need not be a workman of the employer at the time of raising the dispute. A dispute can be raised by the workmen of the employer even in respect of the non-employment of any person who is not his workman at the material time. In the judgment in Kaya Construction Company (Pvt.) Ltd. v. Its Workman reported in AIR 1959 SC 208, the Hon'ble Supreme Court has pointed out that it is well settled that a dispute which validly gives rise to a reference under the Industrial Disputes Act need not necessarily be a dispute directly between an employer and his workmen and that the definition of the expression ' industrial dispute' is wide enough to cover a dispute raised by the employer's workmen in regard to the non-employment of others who may not be his workmen at the material time.

14. Hon'ble High Court in the case of Municipal Employees Union vs. Secretary (Labour) (1999) LLJ 192) almost under similar situation dealt with the question of compassionate appointment under Government scheme to the dependents of even daily wagers who have died in harness. In the above case, deceased workman was working with MCD when he died on 15.02.1993. His family comprised of his old parents and a younger brother Shri Badley Ram. After the death of the workman Shri Sansar Pal his brother Shri Badley Ram requested MCD to give him compassionate appointment. Conciliation proceedings also ended in failure as management took the sand that his case is not covered by the scheme for compassionate appointment. It was also the stand of the management that the present matter is not covered by Industrial dispute as defined under Section 2(k) of the Act. Hon'ble High Court relied upon the case of Delhi Mazdoor Workers Union vs management of MCD decided on 26.11.1998 wherein Hon'ble High Court has taken a view that definition of industrial dispute is wide enough to cover a dispute of the present nature. It was observed that definition of industrial dispute as contained in section 2(k) of the Act is wide enough to cover the dispute of the workman relating to the non-employment of other person. Beneficiary of the claimant need not be a workmen of the employer at the time of raising the dispute. Dispute can be raised by the workman of the employer even in respect of non-employment of any person who is not a workman at the material time. While making the

aforesaid observations, reliance was also placed by the Hon'ble High court upon the case of Kays Construction Company Pvt. Ltd. Vs Workmen (1958 II LLJ 60). Thus a dispute of the present nature where benefit of employment on compassionate grounds is being claimed in respect of employment of deceased husband by his widow, such a dispute is duly covered by the definition of workman as contained under the Act.

15. Hon'ble Apex Court in the case of DDA vs, Sudesh Kumar (2009) III SC 96 again dealt with the same question. In the said case, employee was working in DDA and expired on 03.04.1990. His widow applied for appointment of her son on compassionate grounds with DDA. The application was rejected on the ground that at the time of the death of late Shri Rajender Kumar, he was working on work charge post and he had no right of employment with DDA. However, Hon'ble High Court did not find any merit in the submission of the management and contention of the management that matter is also not even covered by industrial dispute was rejected with equal vehemence by the court, by holding as under:

> 5. We find no merit in the submission of the learned counsel appearing for the appellant. The term 'industrial Dispute' is defined under section 2 (k) of the Act, which reads as follows:
>
> > '2 (k) Industrial Dispute means any dispute between employers and employers or between employers and workman or between workman and workman which is connected with the employment or non employment or the terms of employment or with the conditions of labour of any person.
>
> 6. Section 2(k) came for consideration before the Supreme Court in Workmen of Dimakuchi Tea Estate vs. Management of Dimakuchi Tea Estate (AIR 1958 SC 353 wherein it was held that having regard to the scheme and objects of the Act, and its other provisions, the expression 'any person ' in section 2 (k) of the Act must be read-subject to such limitations and qualifications as arise from the context; the two crucial limitations are (1) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to the other, and (2) the person regarding whom the dispute is raised must be One in whose employment, non-employment, terms of employment, or conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest. In the absence of such interest the dispute cannot be said to be a real dispute between the parties. Where the workmen raise a dispute as against their employer, the person regarding whose employment, non-employment, terms of employment or conditions of labour the dispute is raised need not be, strictly speaking, a 'workman' within the meaning of the Act but must be one in whose employment, non-employment, terms of employment or conditions of labour the workmen as a class have a direct or substantial interest. Where the person was not a workman as he belonged to the medical or technical staff-a different category altogether from workmen of the establishment had no direct, nor substantial interest in his employment or non-employment, and it cannot be said, even assuming that he was a member of the same Trade Union, that the dispute regarding his termination of service was an industrial dispute within the meaning of s. 2(k) of the Act.

16. In the above case, reference was also made to the judgement of Apex Court in Mukand Limited Vs. Mukand Staff Officers Association (AIR 2004 SC 3905). In the said case, it was held that the Tribunal can deal with a dispute which is not directly related to workmen but any person including non-workmen.

17. There is also issue pertaining to maintainability of the petition filed by the claimant. As is clear from the various judgements, discussed above, claim for compassionate appointment can always be filed by dependent family members or kith and kin of the deceased in accordance with law. As such, it cannot be said that the claim filed by the claimant herein, who happens to be widow of the deceased is not legally maintainable. It is a matter of common knowledge that in majority of the cases, applications are normally filed by widows of the deceased for suitable employment as they do not have sufficient income to make both ends meet. In Delhi MCD Workers Union vs Management of MCD (1999) 4 Del 608), please was taken by the management that reference is not maintainable as such the dispute does not fall within the definition of 'industrial dispute' as defined under the Act. It was held by Hon'ble High Court that dispute relating to compassionate appointment raised by the son of deceased employee was an industrial dispute within the meaning of the said section. Therefore, contention of the management that such dispute is not cognizable by the Industrial Adjudicator is devoid of any merit and the same is liable to be rejected at the threshold.

18. In view of the ratio of law enunciated above, and the fact that present case is for compassionate appointment, both the issues are decided in favour of the claimant and against the management.

Issue No.(ii) and (iii)

19. Both these issues are being taken up together for the purpose of discussion as they are inter-related and can be conveniently disposed of. It was strongly urged on behalf of the management by Shri Harbans Kaushal that the claimant had not sent demand notice to the management regarding her compassionate appointment of the claimant

herein, who has claimed appointment after the demise of her husband. Secondly, it was also urged that there was no proper espousal by the union nor there is acceptable evidence on record to prove the same.

20. In the present case, admittedly espousal of the case took place on 01.03.2012 vide Ex.WW2/4. In the present case, Shri B.K. Prasad, A/R for the claimant, appearing as WW2, filed his affidavit Ex.WW2/A. It is clear from perusal of his affidavit that he is the President of the MCD General Mazdoor Union and the case of the claimant Ms. Bimla Devi who is the widow of late Shri Om Prakash was discussed in the general meeting of the union and late Shri Om Prakash who expired on 04.10.2008 was also member of the said union. There is force in the submission of the management that demand notice has to precede the espousal of the case. However, having regard to the provisions of the Act as well as various rulings rendered from time to time by the Hon'ble High Court as well as Hon'ble Apex Court, it is clear that these are procedure prescription to be followed by the claimant before the case is finally taken up by the Industrial Adjudicator for decision in accordance with law. In the case of Shri Pratap Singh Vs Municipal Corporation of Delhi WP(C) 676 of 2013, Hon'ble High Court vide judgement dated 04.02.2013 dealt with the question of espousal under the law. In the said case also, the case was decided by the Labour Court against the workman on the grounds that there was no proper espousal of the dispute. Reason given by the learned Labour Court for upholding objection of the management was that espousal is dated 28.10.2005 Ex.WW3/4 which precedes in point of time of demand notice. In the said case also Shri B.K. Prasad has alleged himself to be President of the union and demand notice was dated 16.09.2005, which was issued even prior to the meeting of the managing committee of the union held on 22.10.2005. Logically, it was only after decision has been taken by the union on 22.10.2005 that demand notice should have been issued. Hon'ble High Court held that this is not fatal to the case of the workman and Labour Court has taken a hyper technical view of the matter. Fact of the matter was that meeting, in fact, was held on the given date wherein issue was discussed. Same is the position in the case on hand. There is no evidence on record to suggest that meeting of the union has not taken place on the date mentioned in the pleadings.

21. Courts have gone to the extent of observing that issuance of demand notice is not essential for raising an industrial dispute and said notice can even be given orally to the management. This view has been taken in Workmen of MCD vs. MCD in WP(C) 13023/2005 decided on 06.08.2007 wherein above view was taken after putting reliance upon the case of Shambunath Goyal vs Bank of Baroda (1978 (2) SCR 793), wherein it was observed as under:

> "A bare perusal of the definition would show that where there is a dispute or difference between the parties contemplated by the definition and the disputes or difference is connected with the employment or non-employment or the terms of employment or, with the conditions of labour of any person there comes into existence an industrial dispute. The Act nowhere contemplates that the dispute Would come into existence in any particular, specific or prescribed manner. For coming into existence of an industrial dispute a written demand is not a sine ,qua non, unless of course in the case of public utility service, because s. 22 forbids going on strike without giving a strike notice. The key words in the definition of industrial dispute are 'dispute' or 'difference'. What is the connotation of these two words. In Beetham v. Trinidad Cement Ltd.(1). Lord Denning while examining the definition of expression 'Trade dispute' in s. 2(1) of Trade Disputes (Arbitration and Inquiry) Ordinance of Trinidad observed:
>
> > "by definition a 'trade dispute' exists whenever a 'difference" exists and a difference can exist long before the parties become locked in a combat. It is not necessary that they should have come to blows. It is sufficient that they should be sparring for an opening".
>
> Thus the term 'industrial dispute' connotes a real and Substantial difference having some element of persistency and continuity till resolved and likely if not adjusted to endanger the industrial peace of the Undertaking or the community. When parties are at variance and the dispute or difference is connected with the employment, or non- employment or the terms of employment or with the conditions of labour there comes into existence an industrial dispute. To read into definition the requirement of written demand for bringing into existence an industrial dispute would tantamount to re-writing the section."

22. In the wake of legal position discussed above, even if there is discrepancy in the dates of demand notice or espousal, which took place in the meeting of the union held by Shri B.K. Prasad, the same is not fatal. In fact, there is no precise definition of espousal under the law and it simply means that the dispute of an individual workman is adopted by the union as its own dispute or majority of workmen present has given support to the cause of the individual workman. It was held in the case of Workmen Union vs Industrial Tribunal (1994 (68) FLR 710 Calcutta) that once a dispute is referred to the Tribunal by the appropriate Government, presumption of it being an industrial dispute is there and court can draw inference and legitimately hold that there has been proper espousal of the case through the union. Hence, these two issues are decided in favour of the management and against the claimant.

Issue No.(v)

23. There is no specific limitation prescribed in the statute for making reference under Section 10 of the Act. There is a long line of decision of various High Courts as well as Hon'ble Apex Court that normally a reference made by the

appropriate Government is to be answered on merits and the same cannot be rejected on the ground that it is time-barred. I also find support to this in the case of Sapan Kumar Pandit vs. UP State Electricity Board (AIR (2000) SC 2560) wherein High Court has dealt with the question of limitation in respect of termination of service of an employee and observed that the was a delay of 17 years in making a reference. However, the reference cannot be solely rejected on this ground. In the present case, death of the husband of the claimant has occurred on 04.10.2008 whereas the application has been moved by the claimant vide Ex.WW1/1 There is endorsement of application 3082/03.08.2009. Thus, there is no inordinate delay in filing the application by widow of Shri Om Prakash.

24. Hon'ble Apex Court in Ajaib Singh vs the Sirbind Co-operative Marketing cum Processing Service Society Ltd. (AIR (1999) SC 1351, while dealing with question of limitation held as under:

> It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and hot as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone.

25. Yet again, in Prabhakar vs Joint Director Sericulture Department (2016) LLR 89), Hon'ble apex Court rejected the plea of limitation raised by the management by observing that under Section 10 of the Act, no limitation period is fixed for making or raising an industrial dispute. It was observed that courts cannot import limitation period when the statute does not prescribe the same. However, it does not mean that irrespective of the facts and circumstances of the case, stale claim must be entertained and relief be also granted by the authority under the ID Act. Court is required to examine the facts and circumstances of the case warranting delay in filing the petition. The reference made by learned A/R for management to the Government Manual dealing with compassionate appointment cannot otherwise override specific provisions of the ID Act which prescribes no such limitation. Since in the case on hand, delay is even otherwise not there in making application by the claimant, as such, this issue is decided against the management.

Issue No.(i)

26. The foremost issue before this Tribunal is whether the claimant is entitled for relief of compassionate appointment. Admittedly, the claimant herein is the widow of late Shri Om Prakash, who died on 04.10.2008. It is apparent from perusal of record that she has filed application before the management for suitable appointment on 03.08.2009. In such circumstances, now the only question which requires to be considered by this Tribunal is whether she is to be granted employment as per the existing norms/policies. Learned A/R for the management strongly urged that since claimant herein was not a permanent employee or a regular employee. As such, there is no policy or scheme of the management, which entitles the widow of the deceased employee to be considered for compassionate appointment. In this regard, learned A/R for the management invited attention of the court to the Establishment manual which clearly provides that dependents for regular Government servants are to be considered for compassionate appointment. Learned A/R for the management also invited attention of the court to Ex.MW1/2 which his circular of the management which deals with welfare measures for the dependents of deceased regular municipal employees. It is clear from the overall examination of that in clause IV age limit of the person seeking employment is restricted to 32 years on the date of application. All these cases are required to be placed before the Committee constituted for this purpose, who is required to take a decision in this regard within a period of one month .

27. Per contra, Shri B.K. Prasad urged that circular dated 16.12.2000 does not have force of law and these are merely guidelines to be followed in the case of compassionate appointment. It was also urged that the case of the claimant herein is otherwise covered by the policy as family of the deceased had no income at the time of filing application and circular Exm.MW1/2 is not applicable to the applicant herein as the same pertains to those cases which were pending at the time when the question of compassionate appointment arose. Shri Prasad further proceeded to argue that in the present case claimant would have been made regular as many of his juniors were already regularized . In this regard, attention of the Tribunal was invited to the statement of Dr. SC. Arun, MW1. This witness has admitted that the name of Shri Om Prakash, husband of the claimant herein, appears at serial No.4 of the list Ex.WW2/5 issued by the management and 9 workmen were regularized vide office order Ex.WW2/5. If it is so, then late Shri Om Prakash, husband of the claimant herein would have also been regularized in due course of time. In such a situation, it cannot even be said that he was a contractual employee, to which the above policy of compassionate appointment is not applicable. This witness has also admitted that long back, services of contractual workers were regularized after the decision of the Hon'ble High Court in Devender Singh case, but the services of husband of the claimant was not regularized. This witness further deposed that he was not aware whether the condition of age and qualification and existence of post in the case of compassionate appointment was waived by the Central Government. Learned A/R for the management could not cite even a single authority of Hon'ble High Court or any other High Court whether compassionate appointment was denied to the dependents of the deceased workmen purely on the ground of age. Moreover, in view of the ratio of law in DDA Vs.Sudesh case (supra), it is clear from the observations made by the

Hon'ble High Court that relief of compassionate appointment normally is not to be denied to the widow of deceased employees who was serving the organization for considerable period.

28. In the Establishment and Administration manual also, there is no upper age limit prescribed under the Scheme. Rather, power has been given to the Government to relax the upper age limit, if any. Not only this, as per para 9 of the scheme, even if a widow gets married later on and gets appointment on compassionate grounds, she will be allowed to continue in service even after remarriage. Clause 16(e) of the above manual also lays down that requests for compassionate appointment consequent on death or retirement on medical grounds of Group 'D' staff may be considered with greater sympathy by applying relaxed standards depending on the facts and circumstances of the case.

29. As a sequel to my detailed discussion made hereinabove, it is held that the claimant herein, Smt. Bimla, W/o late Shri Om Prakash is entitled to compassionate appointment. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : May 4, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 6 जून, 2017

का.आ. 1440.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महानिदेशक, केंद्रीय लोक निर्माण विभाग, नई दिल्ली एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. I, दिल्ली के पंचाट (संदर्भ संख्या 187/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.05.2017 को प्राप्त हुआ था।

[सं. एल-42025/03/2017-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th June, 2017

S.O. 1440.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 187/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. I, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the Director General, Central Public Works Department, New Delhi and their workman, which was received by the Central Government on 05.05.2017.

[No. L-42025/03/2017-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

I.D. No. 187/2012

Shri Raghubir, Labour (work order)
C/o All India CPWD (MRM)
Karamchari Sangathan (Regd.),
4823, Balbir Nagar Extension,
Gali No.13, Shahdara,
Delhi – 110 032 …Workman

Versus

The Director General,
Central Public Works Department,
I.P. Bhawan,
New Delhi …Management

AWARD

This is a complaint under Section 33-A of the Industrial Disputes Act, 1947(in short the Act) with the averments that Shri Raghbir, the claimant, was engaged on work order basis by the Executive Engineer N Division CPWD, New Delhi on 12.0.01.1989. He has also filed claim for regularization with the management in the Department of CPWD on 18.11.2003 before the Regional Labour Commissioner (Central), New Delhi vide Annexure I. Claimant was continuously working under the management The last work order was issued in 2002-03 and 2003-04. During

pendency of the above case before the RLC, management terminated services of the claimant on 28.01.2004 without giving any notice or retrenchment compensation etc.

2. It is the case of the claimant that as per provisions of 30-A of the Act, management has not obtained permission from the RLC, in writing, for retrenching services of the claimant. This amounts to clear violation of provisions of the Act. Prayer has been made finally by the workman for reinstatement with back wages.

3. Management was put to notice and management filed reply to the statement of claim filed by the claimant. Management took preliminary objections that the present complaint is biased and misuse of the process of lay and has been filed with malafide intention and the same is hopelessly time barred. Claimant has not approached the Tribunal with clean hands and has suppressed material facts. It is further alleged that the management is an agency of the Central Government operating throughout the country. Work of planning, construction as well as maintenance and repair generally being executed by engaging private contractors. This is done as per Volume II of the CPWD manual. Management is also given charge of maintaining office and residential building of Central Government. Management has denied the other averments contained in the statement of claim. However, it is admitted that certain designated work was given to the claimant herein for a particular amount and for a particular period whenever his quotation was the lowest. Same was subject to the conditions mentioned in the work order. Work order is for a particular period as per terms and conditions and this may be cancelled by the Engineer In-charge at any time. Lastly, it is prayed that the present application be dismissed.

4. Against this factual background, on the basis of the pleadings of the parties, following issues were framed:

(i) Whether for want of relationship of employer and employee between the parties, there was no occasion for the management to terminate services of the claimant?

(ii) Whether provisions of section 33 A of the Industrial Disputes Act, 1947 came into operation when services of the claimant were dispensed with on 28.01.2004?

(iii) Relief

5. Claimant in support of his case examined himself as WW1 and Shri SAtish Kumar Sharma, as WW2, who tendered in evidence their affidavits Ex.WW1/A and Ex.WW2/A respectively. Documents Ex.WW1/1 to Ex.WW1/8 were tendered in evidence by the claimant. Management, in order to rebut the case of the claimant, examined Shri Surya Kant Rai as MW1 who tendered in evidence his affidavit Ex.MW1/A.

6. I have heard Shri Satish Kumar Sharma, A/R for the claimant and Shri Sanjay Kumar Aggarwal, A/R for the management.

Issue No.1

7. First and foremost question in the present case is whether the claimant herein was in the employment of management. It is the case of the claimant that he was initially engaged with effect from 12.01.1989. Management has come with the plea that the claimant was never engaged directly by the management and designated work was given to the claimant for a particular amount and for a particular period whenever his quotation was the lowest. It is clear from para 5 of the preliminary objections of the management as well as other paras that though it has been denied that the claimant was ever in the employment but admission made by the management in para 5 is clearly suggestive of the fact that some work was given to the claimant for a particular amount for a particular period. In this regard, it is appropriate to refer to the statement of MW1 Shri Surya Kant Rai, whose affidavit is Ex.MW1/A. Affidavit filed by the management is on similar lines as the stand taken in the written statement. This witness has admitted in his cross examination what matter was admittedly listed before the ALC for consideration on 18.11.2003 as is clear from Ex.WW1/6. Statement of claim filed by the claimant before ALC is also almost similar to the one filed before this Tribunal. He has also admitted that no notice was issued to the claimant before his termination as he was not in the employment of the management. He has further made a vital admission that work order was issued to the contractor, Shri Raghubir, i.e. the claimant herein. He further made a vital admission that no permission was obtained from the Conciliation Officer as the claimant was not an employee of the management.

8. Now, the vital question before this Tribunal is whether services of the claimant herein were availed by the management only for a specific work for a specific period. As discussed above, there is no cogent or reliable evidence so as to prove for what time period and for which purpose such work was allowed to the claimant herein from the year 1989 onwards. Admittedly as per the stand taken by the management in the written statement, the said work is of regular nature and maintenance of cleanliness of rooftop and premises is regularly required. At this juncture, it is also appropriate to refer to the notification issued by the Government of India under Section 10 Annexure A. During the course of arguments, issuance of this notification was not disputed by the learned authorized representatives for the respective parties. It is clear from perusal of Annexure 2 that vide notification 31.07.2002 issued under section 10(2) of the CLRA Act, 1970, specific prohibition of employment of contract labour in the following categories were made:

(i) Air Conditioner Mechanic

(ii) Air Conditioner Operator

(iii) Air Conditioner Khalasi/Helper

(iv) Electrician

(v) Wiremen

(vi) Khalasi(Electrical)

(vii) Carpenter

(viii) Mason

(ix) Fitter

(x) Plumber

(xi) Helper/Beldar

(xii) Mechanic

(xiii) Sewerman

(xiv) Sweeper

(xv) Foreman

9. After issuance of the said notification, the workmen were covered under the employment as referred in the above notification and are to be treated as direct employees of the management of CPWD and their status is that of the daily rated workers directly in the management of CPWD. Workers are performing duties, which is of permanent nature, as such, they cannot be treated as contract labour.

10. It is further clear that item No.(xi) and (xiv) pertain to the work of helper/beldar and sweeper respectively. Thus, after issuance of the above notification, management was even otherwise prohibited from engaging any contract labour or allot any work by inviting tender/quotation for the purpose of the job of helper/beldar/sweeper. Thus, the stand of the management that such designated work can still be allotted for specific purpose for a specific period is contrary to the issuance of notification dated 31.07.2002.

11. It is clear from the affidavit Ex.WW1/A of the claimant that he has stated that he was engaged on 12.01.1989 and thereafter he was doing work of repair etc. He was also doing other manual work as assigned to him by the Assistant Engineer concerned. Though he has admitted that no appointment letter was issued to him nor any medical examination was done at the time of initial engagement, yet stand of the management is clear that work was assigned to him from time to time. He has further deposed that he used to mark his attendance in the register maintained by the management. There is no cross examination of this witness on any other point. Stand of the management that work was assigned to the claimant as contractor is not supported by any contract document on record. Rather, statement of the claimant WW1 and that of WW2 is crystal clear to the effect that the claimant was engaged by the management and he was not awarded any kind of contract , Shri Sharma has stated that he has even visited the site when the claimant was found working there. He, further, deposed that work order was issued to him without inviting any quotation by the management and claimant used to carry out work of c\removal of grass and dirt from roof tops of the building of the management and thus work was being assigned to him by the management and this work was being assigned to him by Junior Engineer on daily basis. There is no cross examination of this witness on this aspect of the matter, which is clearly suggestive of the fact that claimant was doing work under supervision of the Junior Engineer concerned, of cutting of grass as well as other manual work assigned to the claimant from time to time. Claimant has also written to the Union Government, Ministry of Labour vide Ex.WW1/1 through Satish Kumar Sharma, WW2, regarding termination of the job of the claimant on 28.01.2004.

12. Tribunal cannot ignore the fact that management has not specifically filed any document so as to show that work was allotted to the claimant herein in the capacity of contractor as was the specific stand taken by the management in the pleadings. Perusal Annexure II, i.e. extract of Supply and Work Order Register, reveals that the name of the claimant Shri Raghubir is mentioned in the said documents and description of the work done is 'cleaning of roof and open area and disposal of malba' for which payment of Rs.14,940.00 and Rs.14,914.00 have been made. This document also shows that in April 2002-03 as well as 2003-04, claimant has done work of cleaning of roof, disposal of malba etc. and the same has been signed by the Assistant Engineer. Thus, the stand of the management that he was not at all in the employment of the management at any point of time is totally falsified by evidence on record. Moreover, this Tribunal is bound to draw adverse inference against the management who has not produced any

document vide which the work was assigned to the claimant as contractor. Accordingly, it is held that the claimant was in the employment of the management.

Issue No.2

13. Now, the residual question before this Tribunal is as to whether provisions of Section 33-A are attracted to the controversy in hand. It is the case of the claimant that his services were terminated on 28.01.2004 with the matter was still pending before the Labour Commissioner. It is clear from perusal of order 30.04.2010 passed by the ALC that matter regarding services of the claimant was pending before the said authority when services of the claimant was terminated on 28.01.2004, though stand of the management before the ALC(Jodhpur), claimant Shri Raghubir was never in the employment of management and management has nothing to do with his service. As discussed above, there is ample evidence on record to suggest that the claimant was doing service of the management and he was assigned work from time to time by the Assistant Engineer of the management, as is clear from the documents placed on record by the management. Since payment of a sum of Rs.14,940.00 and Rs.14,914.00 in the year 2002 and 2003 respectively were made by the Assistant Engineer of the management , as such, it does not lie in the mouth of the management to say that it had nothing to do with the service of the claimant. It is also clear from perusal of letter Ex.WW1/8 dated 28.04.2006 that Shri Satish Kumar Sharma, General Secretary of the workman union informed Ministry of Labour regarding wrongful termination of the claimant on 28.01.2004. In fact, claimant through the union has written to the Ministry for amendment to be also made in the reference regarding termination of the job of the claimant by the management.

14. It is clear from bare perusal of the Act that provisions of Section 33-A that when proceedings are pending before Conciliation Officer, Labour Court, Tribunal etc. and the employer contravenes provisions of Section 33 of the Act during pendency of such proceedings, in that eventuality, Arbitrator/Labour Court/Tribunal, as the case may be, shall adjudicate upon the complaint as if it was a dispute referred to or pending before such court in accordance with the provisions of the Act. This jurisdiction of the Tribunal is primarily dependent upon the fact that there must be proceedings pending before Arbitrator/Conciliation Officer/Labour Court/Tribunal, as the case may be and there must be violation of section 33 of the Act. It is not out of place to mention that section 33 provides projection to an employee whose conditions of service cannot be changed during pendency of such proceedings and any order of termination, suspension etc. can be passed, except with the express permission in writing of the authority before which the proceeding is pending.

15. It has been observed by the Hon'ble Apex Court in Rajasthan State Road Transport Corporation Vs. Satya Prakash (2013) Lab.I.C. 2875 that Section 33 A of the Act has definite purpose to serve, viz. to provide a direct access to the Tribunal and thereby a speedy relief to the aggrieved workman who need not resort to time consuming procedure by seeking a relief under Section 10 of the Act. However, the workman will succeed only if he establishes that the misconduct is not proved or they are clearly in violation of Section 33 of the Act by the management. If the action of the management is proved to be in violation of the above section, it will relate back to the date on which dismissal order was passed by the management.

16. In case an employer or management violates the above provision, then this Tribunal is competent to pass appropriate order to do complete justice between the parties. Since in the case on hand, it is clear that services of the claimant have been dispensed with on 28.01.2004 by the management, when his case was pending before the Regional Labour Commissioner, as such, this Tribunal is of the considered opinion that the claimant is liable to be reinstated with back wages. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : April 25, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 6 जून, 2017

का.आ. 1441.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महानिदेशक (वर्क्स), सीपीडब्ल्यूडी, नई दिल्ली एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. I, दिल्ली के पंचाट (संदर्भ संख्या 76/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.05.2017 को प्राप्त हुआ था।

[सं. एल-42011/153/2014-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th June, 2017

S.O. 1441.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 76/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. I, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the Director General (Works), C.P.W.D, New Delhi and their workman, which was received by the Central Government on 19.05.2017.

[No. L-42011/153/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

I.D. No. 76/2015

Shri Ram Shyam S/o late Shri Desh Raj, through
CPWD Mazdoor Union,
Room No.95, Barrack No.1/10,
Jam Nagar House,Shah Jahan Road,
New Delhi – 110 011 …Claimant

Versus

The Director General (Works)
C.P.W.D.,
Nirman Bhawan,
New Delhi – 110 001 …Management

AWARD

A reference was received from Central Government under clause (d) of sub-section (1) and sub-section(2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) vide letter No.L-42011/153/2014-IR(DU) dated 04.02.2015 for adjudication of a dispute, the terms of which are as under:

> 'Whether Shri Ram Shyam , S/o late Shri Des Raj has any right to be regularized as Motor Lorry Driver with effect from 04.04.2003 in the light of the fact that similarly placed juniors were regularized? If he deserves to be regularized, necessary directions be issued.

2. It is averred in the statement of claim filed on behalf of Shri Ram Shyam, hereinafter referred to as the claimant, that he was initially appointed as Motor Lorry Drivers (in short MLD) on daily wage basis/work order on 12.09.1989. Later on, his services were terminated on 15.07.1993. However, he was reinstated by Labour Court vide its award dated 04.01.2012. It is further averred that award passed by the Industrial Tribunal was further upheld by Single Judge as well as Division Bench of Hon'ble High Court and Hon'ble Supreme Court , upholding stand of the workmen that they are not employees of the contractor in the matter of Satpal Singh case. Further, the Courts have given findings that they were work order employees and are also daily rated workers.

3. Claimant herein is presently posted under Horticulture Division. M-314 and junior person, Shri Narayan Singh, who was initially appointed on muster roll with effect from 24.09.1991 was regularized with effect from 04.04.2003. Daily rated workers with the management have been getting wages in the minimum of pay scale plus all allowances but the workmen herein were denied the said payment, as a result of which the workman has filed the application under Section 33-C(1) of the Act and the said order has been challenged by the management, which is pending before the Hon'ble High Court of Delhi.

4. It is the case of the workman that in the establishment of CPWD, daily rated employees are being paid equal pay for equal work and accordingly the claimant is also entitled for such wages from the management as per office memorandum dated 21.10.1990 as well as 28.01.1991 as skilled workman. Office memorandum dated 21.10.1990 reads as under:

> 'References have been received from some of the Superintending Engineers/Executive Engineers etc. seeking clarification regarding method of computing daily rates payable to daily rated workers of CPWD on the concept of equal pay for equal work. It has been decided that the following formula may be adopted for the purpose of working out daily rates of wages of daily rated workers of CPWD.

The total monthly emoluments admissible to regular counter parts of daily rated workers at the minimum of the respective scale of pay may be multiplied by number of days in a particular month after deducting therefrom the days of absence plus the days of rest falling in the week/weeks in which the worker remained absent and the result may be divided by the number of days in the month. The figure so arrived will be the daily rate of wages of the worker.

Illustration : Suppose number of days in a month is A, amount of emoluments in a particular month of a regular counterpart is B, number of days of absence of worker in a month is C and the number of rest days falling in the week/weeks on which the worker remained absent is D, then the formal for working out daily rats of wages of a daily rated worker would be as under:

$$\text{Daily rate of Wages} = A - (C + D) \times B$$

Note : If a worker works for all the working days in a month availing the admissible rest days, he is entitled to full wages admissible at the minimum stage of the respective scale of pay, including DA/HRA/CCA admissible to his regular counterparts.'

5. It is further averred that as per settlement arrived at between the management and CPWD Mazdoor Union signed before the Chief Labour Commissioner on 02.12.2002 is binding on both the parties under Section 18 of the Act and as per this notification also, claimant is entitled for equal wages. Finally, prayer has been made for regularization of services of both the workmen as MLD with effect from 04.04.2003 alongwith all consequential benefits.

6. Claim was demurred by the management taking various preliminary objections, inter alia of the claimant being awarded work order on contract basis, work order being awarded to contractor and not for engaging workers, claimant not approaching the court with clean hands and concealing of facts. On merits, it is averred that the claimant is not entitled to regularization as he was neither appointed through employment exchange nor through recruitment rules. He was merely issued work order on certain and terms and conditions to work for a certain period on specific rates with terms and conditions that the work order shall be terminated/suspended after issuing two days notice, which has been signed by the claimant herein. Workers engaged on muster roll/hand receipt were regularized as a policy matter and there is no specific policy/rule for regularization of contractor to whom work orders are issued. Claimant was never appointed as motor lorry driver but work order was issued in his name for driving water tanker till 14.07.1993. However, in compliance of award dated 04.01.2012 by Shri M.K. Gupta, learned Presiding Officer, Court No.9 Karkardooma Court complex, he was reinstated in the same capacity by issuing work order. Muster roll workers are issued first entry certificate by the officers engaging them by mentioning their Employment Exchange case number and muster rolls are issued from Division Office to mark attendance of muster roll staff. The wages are paid accordingly as per Section 25(d) of the Act wherein case of work orders, payments are made to contractor on contract bill forms with deduction in TDS etc. Hence, there is clear distinction between work order and muster roll. In Dharbanga Chemical Works Ltd. vs State of Saurashtra and others, AIR (1956) SC 264, it is clearly stated that for any person to be a workman it is necessary he should be in the employment of the employer and merely a contract to do some work is not enough. Finally, prayer had been made for dismissing claim of the claimant.

7. Claimant, in order to prove his case against the management, examined himself as WW1 and tendered in evidence his affidavit, Ex.WW1/A and also relied on documents Ex.WW1/1 to Ex.WW1/6. To rebut the case of the claimant, management examined Shri Nigam Prakash Semwal, Deputy Director, Horticulture as MW1, whose affidavit is Ex.MW1/A. He also tendered in evidence documents Ex.MW1/1 to Ex.MW1/4.

8. I have heard Shri B.K. Prasad, A/R for the claimant and Shri S.S. Parihar, A/R for the management.

9. It is clear from pleadings on record that Shri Ram Shyam was initially appointed as MLD on daily wage basis with effect from 12.09.1989 and his services were later on terminated on 15.07.1993. Later on, he was reinstated on the basis of award dated 22.02.2006.

10. During the course of arguments, attention of this Tribunal was invited to office order Ex.WW1/2, which clearly shows that on the basis of the said office order, services of Shri Vijay Chand was ordered to be regularized ante-date as he joined management prior to joining of some of his juniors whose services were regularized. This also shows that date of entry of Shri Vijay Chand on the muster roll is 13.01.1989.

11. There is also office order Ex.WW1/3, which in fact deals with grant of equal pay for equal work to the daily rated workers and compilation thereof. It has been clarified in the above office order that total monthly emoluments admissible to regular counter parts of daily rated workers at the minimum of the respective scale of pay may be multiplied by number of days in a particular month after deducting therefrom the days of absence plus the days of rest falling in the week/weeks in which the worker remained absent and the result may be divided by the number of days in the month. The figure so arrived will be the daily rate of wages of the worker and in case daily rated workers worked for all the working days in a month including admissible rest days, he is entitled to full wages admissible at the

minimum stage of the respective scale of pay, including DA/HRA/CCA admissible to his regular counterparts. There is also a memorandum of understanding Ex.WW1/4, which deals with the settlement vide which demands of the workmen were considered and allowed. In clause 5 of the above memorandum, it is clearly mentioned that resultant vacancies of workers working in the establishment of the management be filled up as per rules. Since matter was raised by the claimant through the union, as is clear from Ex.WW1/5 whereby General Secretary of the Union raised an industrial dispute regarding grievances of the claimant herein, as such, same was later on referred under section 10 for adjudication by this Tribunal. Affidavit filed by the claimant, Ex.WW1/A is clearly on similar lines as the averments made in the statement of claim.

12. Hon'ble Supreme Court in the case of Surinder Singh vs. Engineer-in-Chief, CPWD (ATR 1986 SC 1976) decided on 17.01.1986, dealt with the question of equal pay for equal work in respect of daily rated workmen performing same duties which was being performed by their regular counterparts in the department. After discussing the ambit and scope of Article 14 of the Constitution of India, it was held that there should be equal pay for equal work of equal value. It makes no difference whether such workmen are employed against sanctioned post or not so long as they are performing the same duties. They must receive same salary and conditions of service must also be the same. Hon'ble Supreme Court also expressed anguish that most of the workers are kept in service on temporary basis as daily wage workers without their service being regularized, which is completely against the spirit of Article 14 of the Constitution of India.

13. Hon'ble Supreme Court in the case of Director General Works, CPWD vs Devender Singh considered the question of regularization as well as payment of equal wages for such daily rated workmen. Writ appeal filed against judgement dated 18.04.2004 of the Single Judge, whereby writ petition was filed by the management was dismissed and award passed by Industrial Tribunal No.2 was upheld. It was also the case of daily rated workers working on muster roll who were posted in various Divisions of the CPWD. In the said case, there is clear cut mention in para 9 of the judgment that when services of a junior has been regularized, there is no justification to deny such relief to workman who was senior to such worker, otherwise it would amount to discrimination, which is not permissible under the law, as has been held in Secretary State of Karnataka vs.Uma Devi (2006 4 SCC 1).

14. In the case on hand also it is clear from office order Ex.WW1/2 that Shri Vijay Chand, who was working on muster roll was regularized ante date 04.04.2003 and he was on muster roll on 13.01.1989. In the present case, claimant Shri Ram Shyam was engaged on daily wage basis on 12.09.1989. Since junior to him have already been regularized, as such, there is no reason or basis to deny regularization to such a workman. Hon'ble High Court in Devender Singh case(supra) referred to the decision of the Hon'ble Apex Court in the case of Bal Kishan Vs. Delhi Administration and observed as under:

> 10. In service, there could be only one norm for confirmation or promotion of persons belonging to the same cadre. No junior shall be confirmed or promoted without considering the case of his senior. Any deviation from this principle will have demoralizing effect in service apart from being contrary to Article 16(1) of the Constitution.

15. There is also judgement dated 04.04.2006 of the Hon'ble High Court which also deals with the same matter, pertaining to the case of Vijay Chand. In the said judgement also, Tribunal has passed an award in respect of workman Shri Vijay Chand on the premise that regularization was granted to equally placed other three workmen, and there was no reason to deny the relief of regularization to Shri Vijay Chand who was similarly placed like the other three workmen. As such, direction was made for considering the case of the workman for regularization. Thereafter, matter was again taken by way of SLP before the Hon'ble Apex Court in the case titled Union of India vs. Vijay Chand decided on 07.01.2011. Contention of the management was rejected and order of regularization by the High Court and that of the Industrial Tribunal was reaffirmed as under:

> 'In our view, the direction given by the Tribunal for consideration of the respondent's case for regularization of service, as was done in the case of other three similarly situated persons, was legally correct and justified and the High Court did not commit any error by refusing to interfere with the order of the Tribunal. In the facts and circumstances of the case, we do not consider it to be a fit case for exercise of jurisdiction by the court under Article 136 of the Constitution.
>
> The special leave petition is accordingly dismissed.'

16. Lastly, reliance was placed on behalf of the claimant in the case of Director General: Works, CPWD vs Karam Singh and others. It was a case where the claimants were also party to the said case. Contention of the management regarding denial of relief of regularization and equal wages to such workmen who were performing similar kind of duties like their regular counter parts, was rejected by the Hon'ble High Court of Delhi and the calculation of the wages in terms of office order dated 21.10.1990 applicable for daily rated workers was upheld. It was further held when a particular award has attained finality, such daily rated workers were direct employee and are entitled for equal wages,

there is no question of entertaining such plea time and again. Workman was held entitled to the recovery of amounts due under the impugned recovery certificate as ordered by the Tribunal.

17. Perusal of the statement of Shri Nigam Prakash Semwal MW1 reveals that though he admitted that the payment of wages of the claimant was made direct to bank account but he was not aware whether it was paid through receipt or not. This witness has admitted in having complied with the orders of the Hon'ble Courts as mentioned in his affidavit. The witness also admitted in having made payment, except increments, as per orders dated 02.07.2015 of the Presiding Officer Labour Court No.22 Ex.WW1/1.

18. It is, thus, clear from detailed discussions made herein above, that the claimant herein was a daily rated workers and was working regularly since his initial appointment. When services of juniors to the claimant are regularized, there is no legal basis or justification in the wake of clear cut pronouncement made by the Hon'ble High Court of Delhi as well as Hon'ble Apex Court to deny regularization to the said claimant from the date mentioned in the petition.

19. Accordingly, it is held that Shri Ram Shyam, the claimant herein, is entitled to be regularized as Motor Lorry Drivers with effect from 04.04.2003, the date when junior to him were regularized, with all consequential benefits. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : May 17, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 6 जून, 2017

का.आ. 1442.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सीडीआर देवप्पा, मैसर्स टैब सुरक्षा सेवाएं (ठेकेदार) व अन्य, नई दिल्ली एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. I, दिल्ली के पंचाट (संदर्भ संख्या 169/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.05.2017 को प्राप्त हुआ था।

[सं. एल-42025/03/2017-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th June, 2017

S.O. 1442.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 169/2016) of the Central Government Industrial Tribunal-cum-Labour Court No. I, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the CDR Devappa, M/s. Tab Security Services (Contractor) and Others New Delhi and their workman, which was received by the Central Government on 19.05.2017.

[No. L-42025/03/2017-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

I.D. No. 169/2016

Shri B.S Dahiya, S/o Shri Ravi Dutt Dahiya,
R/o Villate and PO Nahara,
Distt. Sonipat, Haryana …Workman

Versus

1. Shri CDR Devappa,
   M/s Tab Security Services (Contractor)
   Plot No.6, 3rd Floor,
   Sector10, Dwarka,
   New Delhi

2. D.R.D.O,
   Chief Security Office
   Metcalfe House,
   New Delhi …Managements

AWARD

Shri B.S. Dahiya, the claimant, was appointed by M/s Tab Security Services (in short the contractor) as Security Guard in the premises of DRDO (in short the management), the principal employer. The contractor had not been providing benefits of labour laws, i.e. minimum wages, gratuity, appointment letter, earned wages, leave wages etc. Claimant was also deprived of the minimum wages as issued by the Ministry of Defence in its notification dated 01.04.2013. The same was demanded by the claimant, which annoyed the contractor and finally, he was terminated on 05.01.2013 without any prior notice or notice pay in lieu of one month notice. His earned wages for the months of August and September 2013 were also not paid, which is in violation of labour laws. The termination is alleged to be arbitrary, illegal, unjustified and against labour laws. An industrial dispute is raised by the claimant before this Tribunal on 03.11.2016, using right available to him under the provisions of sub-section (2) of section 2-A of the Industrial Disputes Act, 1947 (in short the Act), without being referred for adjudication by the appropriate Government under sub-section (1) of section 10 of the Act.

2. Thereafter, matter was listed for arguments on maintainability of the application. Part arguments were advanced by the Ms.Jolly Sharma, A/R for the claimant. However, it was stated by the A/R for the claimant that reference is likely to be made in the instant case by the appropriate Government. However, thereafter neither reference was received nor any authorized representative on behalf of the claimant appeared before this Tribunal. Non-appearance of the claimant clearly depicts that he is no more interested in adjudication of the case on merits.

3. Further, the claimant herein has raised an industrial dispute before this Tribunal on 03.11.2016, using provisions of sub section (2) of section 2-A of the Act. For approaching this Tribunal, under provisions of sub-section (2) of section 2-A of the Act, limitation of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service of an employee has been imposed by the legislature. Thus, it is apparent that the claimant could have approached this Tribunal under sub-section (2) of section 2-A of the Act till 02.11.2016 only. As is evident, claim preferred is beyond the period of limitation. Under these circumstances, this Tribunal cannot invoke its jurisdiction for adjudication of the dispute. Accordingly, his claim is dismissed, being barred by time. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : May 16, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 6 जून, 2017

का.आ. 1443.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कमांडिंग आफिसर, आईएनएस इंडिया, नई दिल्ली एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. I, दिल्ली के पंचाट (संदर्भ संख्या 12/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.05.2017 को प्राप्त हुआ था।

[सं. एल-14012/27/2016-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th June, 2017

S.O. 1443.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 12/2017) of the Central Government Industrial Tribunal-cum-Labour Court No. I, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the Commanding Officer, INS India, New Delhi and their workman, which was received by the Central Government on 19.05.2017.

[No. L-14012/27/2016-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

I.D. No. 12/2017

Smt. Sakuna Devi,
W/o late Shri Ram Kishore,
R/o L-1, 69 near Church Colony,
Sangam Vihar
New Delhi – 110 065 …Workman

Versus

The Commanding Officer,
INS India, Dalhousie Road,
New Delhi 110 011 …Management

AWARD

Central Government, vide letter No.L-14012/27/2016-IR(DU) dated 22.12.2016, referred the following industrial dispute to this Tribunal for adjudication:

> "Whether the claim of the workwoman Smt. Sakuna Devi, Rice Cleaner for reinstatement after termination with effect from 17.04.2013 from INS India, in view of management's categorical denial that the workwoman was ever their employee, is correct, justified and legal? If yes, to what relief is she entitled to?

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, claimants Gupta opted not to file their claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the claimant as well as the management. However, the postal article sent to the claimant was received back from the postal department with the remarks 'No Such Person'. It is pertinent to mention here that the notice was sent to the claimant at the address given in the reference order received from the appropriate Government. This Tribunal has no alternate address of the claimant. In view of the above reasons, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : May 16, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 6 जून, 2017

का.आ. 1444.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, एम्स, नई दिल्ली एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. II, दिल्ली के पंचाट (संदर्भ संख्या 54/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.04.2017 को प्राप्त हुआ था।

[सं. एल-42011/46/2014-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th June, 2017

S.O. 1444.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 54/2014) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the Director, AIIMS, New Delhi and their workman, which was received by the Central Government on 26.04.2017.

[No. L-42011/46/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II, KARKARDOOMA COURT COMPLEX, DELHI-110032

I.D. No. 54/2014

The President ,
AIIMS Employee Union,
Ansari Nagar,
New Delhi-110029

Versus

The Director,
AIIMS, Ansari Nagar,
New Delhi.

EXPARTE AWARD

The Central Government in the Ministry of Labour vide Notification No. L-42011/46/2014-IR(DU)) dated 16.07.2014 referred the following Industrial Dispute to this Tribunal for adjudication:-

A. "Whether the action of the management of AIIMS is degrading the workman Sh. Bachan Singh Rana from the post of AC mechanic to the post of Khallasi without giving any reason is just, fair and legal? If not what relief the workman concerned is entitled to?

B. "Whether the regularization of the workmen junior to Sh. Bachan Singh Rana without regularization of workman Sh. Bachan Singh Rana is just, fair and legal? If not what relief the workman is entitled to ?

On 1.08.2014 reference was received is this Tribunal. Which was register as I.D. No. 54/2014 and claimant union was called upon to file claim statement within fifteen days from the date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice claimant Sh. Bachan Singh Rana filed claim statement on 29.08.2014. Where-in he prayed as follows:

i. Stay order to change the nature of work which is intentionally change from mechanic AC (refrigerator) to Khalashi.

ii. An order to release the forcibly taken I Card bearing S.no. E-84 whose validity is till February 2015.

iii. Pass order to correct the designation on the pay sleep which is intentionally change from mechanic AC(Refrigerator) to Khalashi.

iv. Pass an order to issue notice for clarification regarding the period of temporary status i.e.1993 to 1995 as per order passed by Hon'ble Supreme Court.

v. An Award for regularization for the designation of mechanic (AC & Refrigerator) from 10.05.1889 on the basis of seniority.

vi. An Award for all the benefit such as PF, Gratuity etc. Payable to the Claimant/workman as per group 'C' employee for the post of (AC & Refrigerator).

vii. Pass an order to pay the wages for the psot of AC mechanic from 1989 along with arrears deference between mechanic (AC & R) & Khalashi.

viii. An award for taking action against AIIMS administration for exploitation to claimant and violation of its fundamental right,

Against claim statement management has not filed written statement inspite of service hence case proceeded ex-parte against management on 26.09.2016.

Workman in his ex-parte evidence tendered his affidavit WW1/A on 26.09.2016.

Workman re-examined himself on 21.11.2016and tendered eighteen original & 19 photo copies of documents as he was permitted to lead secondary evidence.

On 26.12.2016 I have heard the oral ex-parte arguments of workman /claimant Bachan Singh Rana. He also filed written arguments on 22.12.2016.

In the light of contentions of workman I perused the pleadings of claim statement and his oral and documentary evidence including the contents of written argument.

On the basis of which my question of determination-wise findings are as follows:-

Finding on question of determination No. 1 :

Burden to prove it lies on workman/ claimant. There is only oral evidence of workman. Which is not corroborated by any other witness. Which was required in the instant case as work of workman was technical and his allegation against management of AIIMS, New Delhi, that he was degraded from the post of AC mechanic to the post of Khalasi. So he was required to adduce reliable, credible and required evidence of such person who may testify the merit of claimant in this respect. Which is wanting in the instant case. Moreover there is no employer and employee relationship between management of AIIMS and employee as he was contractual employee and he has not made contractor party. He is suppressing this fact. Reason obvious is that he want to show that he is employee of

management of AIIMS. It is also relevant to mention here that claimant in his claim statement no where mentioned that contract was camouflage. After pleading he has not adduced his evidence to prove this fact. Which is also wanting hence this Tribunal has no option except to decide it that there is no relationship of employer and employee between claimant and management of AIIMS. Question of Determination No. 1 is also liable to be decided in favour of management and against workman. Which is accordingly decided.

Finding on question of determination No.2 :

It is relevant to mention here that workman Sh. Bachan Singh Rana in his claim statement pleaded that almost of all juniors to him have been regularized by management of AIIMS without regularizing Sh. Bachan Singh Rana and alleged that it is not just, fair and legal. It is also relevant to mention here that claimant Sh. Bachan Singh Rana in para - 8 of his claim statement pleaded that workman Sh. Raj Kumar who was junior to him was given promotion ignoring seniority of claimant Sh. Bachan Singh Rana. He could not mentioned the names of other juniors workers who have been promoted except Sh. Bachan Singh Rana. He also suppressed the fact of his being contractual employee. He could not claim such relief without pleadings and proving the fact of contract between management no. 1 with contractor was camouflage etc. which is wanting in the instant case.

Inwant of such pleadings and evidence of workman this Tribunal is complelled to decide question of determination no. 2 in favour of management of AIIMS and against claimant Sh. Bachan Singh Rana.

Which is accordingly decided against workman Sh. Bachan Singh Rana and in favour of management.

Reference is accordingly decided against workman and in favour of management.

Claim statement is dismissed. Award is accordingly passed.

Dated : 15.03.2017

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 6 जून, 2017

का.आ. 1445.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स रिलायंस सेंटर कम्युनिकेशन एंड लि. रणजीत होटल, नई दिल्ली व अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. I, दिल्ली के पंचाट (संदर्भ संख्या 11/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.05.2017 को प्राप्त हुआ था।

[सं. एल-42012/86/2016-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th June, 2017

S.O. 1445.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 11/2017) of the Central Government Industrial Tribunal-cum-Labour Court No. I, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the M/s. Reliance Centre Commnication & Ltd., Ranjeet Hotel, New Delhi & others and their workman, which was received by the Central Government on 05.05.2017.

[No. L-42012/86/2016-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

I.D. No. 11/2017

Shri Sonu, S/o Shri Naval Kishore,
House No.75, DDA Flats,
Mata Sundari Road,
New Delhi – 1110 002 …Workman

Versus

1. M/s Reliance Centre Communication & Ltd.,
Maharaja Ranjeet Singh Marg,
Ranjeet Hotel,
New Delhi – 110 002

2. M/s A.C.E. Facility Management Pvt. Ltd.
H.R. 36/2, 60 Foota Pul Pahiladpur,
New Delhi – 110 044 …Management

AWARD

Central Government, vide letter No.L-42012/86/2016-IR(DU) dated 26.12.2016, referred an industrial dispute under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) to this Tribunal for adjudication, with the following terms of reference:

> "Whether the following workmen (1) Shri Narendra Kumar, (2) Shri Manoj Kumar, (3) Shri Vikash, (4) Shri Vijay Kumar, (5) Shri Ravi, (6) Shri Gautam, (7) Shri Monu, (8) Shri Sonu I.P.B., (9) Shri Ashwani, (10) Shri Kishan Pal, (11) Shri Niranjan, (12) Shri Satish, (13) Shri Harish, (14) Shri Manoj H.B., (15) Shri Naresh, (16) Shri Vikaram, (17) Shri Amarjeet, (18) Laljee, (19) Rahul, (20) Sheela, (21) Preeti, (22) Pawen, (23) Shri Yogesh engaged through M/s Reliance Communication Ltd., Maharaja Ranjeet Singh Marg, New Delhi and M/s A.C.E. Facility Management Pvt. Ltd are entitled to reinstatement and all consequential benefits? If not, then what relief the workmen are entitled to and from which date?"

2. In the reference order, the appropriate Government commanded the party/ies raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, the claimants opted not to file their claim statement with the Tribunal.

3. On receipt of the above reference, notice was also sent to the claimant as well as the managements. Neither the postal article, referred above, sent to the claimant was received back nor was it observed by the Tribunal that postal services remained affected during the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite service of the notice, the claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the claimant is not interested in adjudication of the reference on merits.

4. Since the claimant neither put in his appearance nor has he lead any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : May 3, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 7 जून, 2017

का.आ. 1446.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार रजिस्ट्रार, दिल्ली विश्वविद्यालय, दिल्ली विश्वविद्यालय कैंपस, नई दिल्ली एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. I, दिल्ली के पंचाट (संदर्भ संख्या 74/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.06.2017 को प्राप्त हुआ था।

[सं. एल-42011/220/2011-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 7th June, 2017

S.O. 1446.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 74/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. I, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the Registrar, Delhi University, Delhi University Campus, New Delhi and their workman, which was received by the Central Government on 01.06.2017.

[No. L-42011/220/2011-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

I.D. No. 74/2013

The General Secretary, Delhi Labour Union,
Agarwal Bhawan, GT Road, Tis Hazari,
New Delhi-110 054 …Workman

Versus

The Registrar,
Delhi University,
Delhi University campus,
New Delhi-110 007 …Management

AWARD

Consequent upon receipt of order No.L-42011/220/2011-IR(DU) dated 01.04.2013 from Ministry of Labour, Government of India under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act), this Tribunal is enjoined upon to adjudicate an industrial dispute, the terms of which are as under:

> 'Whether the action of the management of University of Delhi in not regularizing the services of Shri Shitla Prashad, is legal and justified? What relief the workman is entitled to?'

2. It is clear from the statement of claim that the claimant, Shri Shitla Prasad joined the management on 03.10.1997 as mali and was treated as a daily rated/casual/muster roll worker and was being paid wages at fixed and revised rates from time to time under the Minimum Wages Act. Case of the claimant is that his counterparts who were doing identical work were being treated as regular employees and were being paid proper pay-scale and allowances, such as uniform, earned leave, casual leave, gazetted and restricted holidays etc. Claimant has an unblemished and uninterrupted record of service to his credit. Service of the claimant was terminated on 01.10.1998 without assigning any valid reason by the management. The above termination was challenged by the claimant before the Industrial Tribunal and an award was passed in favour of the claimant by the Tribunal by the then Presiding Officer, Court No.III in ID No.674 of 2000. Termination of the claimant was held to illegal and unjustified and claimant was ordered to be reinstated in service with 50% back wages. The award was duly published vide Labour Commissioner Certificate dated 19.05.2003 and thus became enforceable on 18.06.2013 as the same became final. It is the case of the claimant that he was entitled to be treated as a permanent employee from the initial date of joining with the management and that the management has not taken any steps to regularize his services in proper pay scale and allowances with retrospective effect on 03.10.1997. It is pertinent to mention here that the claimant made several representations vide letters dated 10.06.2004, 17.08.2004, 02.11.2004, 17.02.2005, 03.05.2005, 11.08.2005, 18.11.2005, 24.01.2006, 14.02.2006, 07.11.2007 and 06.02.2008 etc. but to no avail. Non-regularization of services of the claimant against post of mali in proper pay scale and allowances amounts to unfair labour practice. Job on which the claimant is working is permanent and regular in nature and the claimant is being paid less salary than his regular counterparts, which amounts to sheer exploitation.

3. Management was put to notice who filed written statement to the statement of claim filed by the claimant. It has been admitted that the claimant herein was engaged from time to time depending upon the exigencies of work on daily basis on 03.10.1997 for varied unskilled work such as digging pits, clearing campus roads by removing waste material etc., picking up garbage, carrying tools and equipments, pushing cards, assisting regular malis, shifting furniture etc. Claimant cannot compare himself with regular employees who have been appointed against sanctioned post by following due process and their selection was also through the selection committee. It is denied that the services of the claimant was terminated on 01.10.1998. Management has denied the other material averments contained in the statement of claim. Claimant herein was reinstated in view of earlier award dated 18.11.2000 as modified vide judgement dated 18.02.2003 of the Hon'ble High Court of Delhi. Management has denied the other averments made in the statement of claim.

4. It is clear from order dated 30.09.2013 my learned predecessor clarified that no issue other than the one referred for adjudication by the appropriate Government is made out . Claimant in support of his case examined himself as WW1 and tendered in evidence Ex.WW1/A as well as documents Ex.WW1/1 to Ex.WW1/18. The claimant also examined Shri Surender Bhardwaj, General Secretary of Delhi Labour Union as WW2, whose affidavit is Ex.WW2/A.

Management, in order to rebut the case of the claimant examined Shri G.K. Singh, Deputy Registrar as MW1, whose affidavit is ExMW1/A. However, he has tried to prove certain documents.

5. I have heard Shri Abhinav Kumar, A/R for the claimant and Shri Shiv Ram Singh, A/R for the management.

6. It is neither in doubt nor in dispute that the claimant herein joined employment with the management on 03.10.1997. Though the case of the claimant is that he has been working right from inception as mali and was engaged by the management as daily raged/casual/muster roll worker whereas the stand of the management s that he was never recruited after following due procedure nor any letter of appointment was offered to him. He was simply engaged on daily basis from 03.10.1993 for varied unskilled labour work, details of which are mentioned in Para 1 of the written statement.

7. During the course of arguments, it was also not denied that earlier claimant had raised a dispute regarding his alleged germination vide award Ex.WW1/3 dated 18.11.2002 and reinstatement of the claimant herein was ordered by the Industrial Tribunal with payment of 50% back wages. It was also not disputed that the management had gone in writ appeal in CWP No.5188 of 2003 and learned single judge of Hon'ble High Court vide judgement dated 18.08.2003 by setting aside the award partly relating to payment of wages to the extent of 50% and ordering payment of compensation of Rs.15000.00.

8. Record of the present case also shows that in view of the aforesaid judgement passed in favour of the claimant by the Adjudicator as well as Hon'ble High Court, claimant rejoined services of the management on 07.10.2003 vide Ex.WW1/4 addressed to the Registrar, University of Delhi. He has also filed with this letter co of judgement of August 2003 of Hon'ble High Court of Delhi whereby findings of the learned Industrial adjudicator qua the illegal termination was upheld. Claimant had also approached the management for regularization of his services against the post of mali vide letter Ex.WW1/6. In the said letter, claimant has alleged that his services be regularized against the vacant post in the department as he has been working since 1997 as Mali. There are letters Ex.WW1/7 to Ex.WW1/14 to the similar effect making prayer for regularization of his services addressed by the claimant to the Registrar of the University which shows that from time to time claimant had approached the Registrar of the University with the request for regularization of his services against the vacant post of mali. It is further clear that no specific reply was ever given by the management to the aforesaid letters addressed by the claimant to the University.

9. Claimant while appearing as WW1 has tendered in evidence his affidavit Ex.WW1/A which is on the same lines as the averments made in the statement of claim. He has admitted in his cross examination that no application form was filled by him at the time of his recruitment as mali, He has made reference to the various letters written to the management for regularization of his services. He has denied all material suggestions put to him by the management and there is hardly anything in the cross examination of this witness to impeach his credit.

10. Claimant also examined Shri Surender Bhardwaj, General Secretary of Delhi Labour Union as WW2 and his affidavit is Ex.WW2/A. This witness has clarified vide Ex.WW1/15 that the case of the claimant herein was discussed and adopted by the union.

11. Statement of Shri G.K. Singh, Deputy Registrar of University of Delhi MW1 does not help the cause of the management in any manner. Rather, his cross examination clearly shows that service of other malis who joined after 1991 were regularized and the list in this regard is Ex.MW1/W1. It is clear from the list that the name of Shri Pradeep Kumar is at serial No.20 and his services were regularized on 30.07.2008. This workman is admittedly junior to the claimant Shri Shitla Prasad, whose services have not been regularized. Reference was also made to such like similar cases by the claimant and learned A/R for the management tried to counter the submissions by the claimant by contending that the post of mali is semi skilled and claimant was not initially engaged as mali and he was simply assisting regular malis and was performing such petty jobs as assigned to him from time to time. He was never recruited, in the contention of the management, in accordance with norms, therefore the claimant cannot claim parity on grounds pay scale and allowances with other regular employees.

12. During the course of arguments, learned A/R for the management strongly relied upon the case of Nihal Singh vs State of Punjab (MANU/SC/0780/2013) wherein Government of Punjab made recruitment of ex-servicemen as special police officers to counter terrorisms. They were paid daily wages and no regular pay scale was initially paid to them. They were also issued appointment order. Since claim for their regularization was refused by the Government, same became subject matter of litigation up to the Hon'ble Apex Court. Management in the said case strongly relied on Uma Devi case wherein view has been taken by Constitution Bench of Hon'ble Supreme Court that when recruitment of an employees is in derogation of the rules and regulations, or the same is in violation of statutory principles, no relief can be granted to such employees.

13. In the above case, Hon'ble Apex Court finally rejected plea of the management that there were no sanctioned posts available with the Government so as to make such employees regular. Hon'ble Apex Court also went to the extent of observing that it does not behold the State Government to deny relief of regularization when such employees

have put in number of years in service and were performing similar nature of job like their regular counter parts. Resultantly, such employees were held to be entitled to be absorbed in services of the State.

14. Similar view appears to have been taken in Umrala Gram Panchayat vs. Secretary MCD (2015) LLK 449. In the said case also, it was found that so called temporary or daily wager employees who were performing similar work and duties which were being performed by their regular counterparts and they have been working for similar number of hours. There was a lot of disparity in the salary of permanent employees vis-à-vis such daily/casual employees. Hon'ble Apex Court held the same to be unfair labour practice which belittles the doctrine of equality before law.

15. Hon'ble Apex Court also distinguished the ratio of judgment in Uma Devi case by holding that provisions of Industrial Disputes Act and the powers conferred upon the Industrial Tribunal under the Industrial Disputes Act were not at all under consideration before the Hon'ble Apex Court in Uma Devi case.

16. There is another judgement of Hon'ble Apex Court in the case of ONGC Ltd. vs Petroleum Coal Labour Union (2015) Lab.IC 2483 wherein Hon'ble Apex Court rejected plea of the management regarding non following of due procedure while recruiting such casual or temporary employees. Plea of the management for refusing regularization was turned down by observing as under:

> 'Even though due procedure was not followed by the Corporation for the appointment of the concerned workmen in the post of 'watch and ward security, this does not disentitle them of their right to seek regularization of their services by the Corporation under the provisions of the Certified Standing Orders, after they have rendered more than 240 days of service in a calendar year from the date of the memorandum of appointment issued to each one of the concerned workmen in the year 1988. The alleged "policy decision" to appoint CISF personnel to the security post is on deputation basis and cannot be called appointment per se. Whereas, the concerned workmen have acquired their right to be regularized under the provision of Clause 2(ii) of the 'Certified Standing Orders.
>
> Further the concerned workmen have clearly completed more than 3/240 days of services subsequent to the memorandum of appointment issued by the Corporation in the year 1988 in a period of twelve calendar months, therefore, they are entitled for regularization of their services into permanent posts of the Corporation as per the Act as well as the Certified Standing Orders of the Corporation.'

17. In the above case also, reliance was placed by the management in Uma Devi case and in para 36, it was held as under:

> 'Uma Devi does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of the MRTU and PULP Act to order permanency of the workers who have been victims of unfair labour practice on the part of the employer under Item 6 of Schedule IV where the posts on which they have been working exist. Umadevi cannot be held to have overridden the powers of the Industrial and Labour Courts in passing appropriate order under Section 30 of the MRTU and the PULP Act, once unfair labour practice on the part of the employer under Item 6 of Schedule IV is established."

18. I have also carefully gone through the ratio of the case in Vice Chancellor, Lucknow University Vs. Akhilesh Kumar Khare [(2015) LLR 1121] relied by the management . It was a case where Hon'ble High Court upheld the award passed by the Industrial Tribunal and directed the University to consider the case of the workman for regularization of their services as and when vacancies arise and till that time they be paid emoluments which were being paid by the University authorities so similar situated workers. Narration of the fact in para 2 of the judgement further shows that the workmen were engaged by the university as daily wagers and they were being paid from the contingencies fund. Vice Chancellor has also issued order dated 03.08.1990 notifying that daily wagers would not be allowed to continue in any case after 03.12.1990 unless proper permission is obtained from the Vice Chancellor. It was further directed that if there is any need of extra hand, section Heads must send a demand for creation of posts to the Deputy Registrar (Admn.) with details justifying the need. After termination of the job of the workman, Hon'ble Apex Court held that admittedly workmen were engaged by following due procedure and their engagement was not against any sanctioned post. In order to curb the illegal practice of engaging daily wagers, Vice Chancellor issued order dated 03.08.1990 mentioned above, prohibiting engagement of such labour and also clarified that such daily wagers would not be allowed continue after 31.12.1990. It was against this background that Hon'ble Apex Court was approached to take a view that such daily wager, temporary or casual workers were aware of the consequences of their such appointment, they cannot invoke the theory of legitimate expectation for regularization of their services for their selection was not made by following due procedure as laid down by provisions of law.

19. The facts and situation in the case on hand is different. The work performed by the claimant has been found to be regular and permanent in nature. Perusal of list Ex.MW1/W1 shows that even workmen junior to the claimant herein were regularized on 30.07.2008. Management has not adduced any evidence on record to show that selection process in case of Shri Pradeep Kumar or such other employees whose services have been regularized by the

management was different than the claimant herein. Rather, neither any office order nor any relevant record was produced as to how the services of Shri Pradeep Kumar and other co-workers have been regularized while denying the benefit to the claimant herein, who was admittedly senior to them.

20. As a sequel to the discussions made hereinabove, it is held that the action of the management in not regularizing the services of Shri Shitla Prasad is totally illegal and unjustified. It is held that Shri Shitla Prasad, the claimant is entitled to be regularized with effect from 30.07.2008, i.e. the date from the date his juniors were regularized. He is also entitled to be paid the difference of salary amount. An award is accordingly passed. It be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : May 30, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 7 जून, 2017

का.आ. 1447.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार रजिस्ट्रार, आईआईटी, रुड़की, हरिद्वार एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. II, दिल्ली के पंचाट (संदर्भ संख्या 166/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.05.2017 को प्राप्त हुआ था।

[सं. एल-42011/95/2012-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 7th June, 2017

S.O. 1447.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 166/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the Registrar, IIT, Roorkee, Haridwar and their workman, which was received by the Central Government on 18.05.2017.

[No. L-42011/95/2012-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II, KARKARDOOMA COURT COMPLEX, DELHI-110032

I.D. No. 166/2012

Sh. Suresh, S/o Sh. Budh Prakash,
General Secretary,
IIT Roorkee Karamchari Union.
IIT Roorkee, Haridwar - 247667

Versus

The Registrar,
IIT, Roorkee, Haridwar - 247667

NO DISPUTE AWARD

The Central Government in the Ministry of Labour vide Letter No. L-42011/95/2012-IR(DU) Dated 21.11.2012 referred the following Industrial Dispute to this Tribunal for adjudication:-

> "Whether action of management of IIT Roorkee in not regularizing the workman, Sh. Suresh S/o Sh. Budh Prakash, Mali despite rendering service for more than 24 years continuously is justified? If yes, to what relief workman is entitled to?"

On 02.12.2012 reference was received in this Tribunal. Which was register as I.D. No. 166/2012 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

On 06.05.2013 workman filed his claim statement. Fixed 04.07.2013 for filing of written statement.

On 05.09.2013 management filed written statement. No need to formulate issue other than reference. Hence fixed 10.12.2013 for evidence of claimant.

Several opportunities given to workman to adduce his evidence but he failed to adduce his evidence. In want evidence of workman there is no need to management to adduce its evidence.

So on 26.04.2017 I reserved the Award.

I perused the record which shows that workman in support of his case adduced no evidence.

In want of which only "No dispute Award" award can be passed.

Which is accordingly passed.

Dated : 26.04.2017

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 7 जून, 2017

का.आ. 1448.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कार्यकारी अभियंता, सीपीडब्ल्यूडी, विद्युत भवन, नई दिल्ली एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. II, दिल्ली के पंचाट (संदर्भ संख्या 66/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.04.2017 को प्राप्त हुआ था।

[सं. एल-42012/26/2013-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 7th June, 2017

S.O. 1448.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 66/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the Executive Engineer, CPWD, Vidyut Bhawan, New Delhi and their workman, which was received by the Central Government on 26.04.2017.

[No. L-42012/26/2013-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II, KARKARDOOMA COURT COMPLEX, DELHI-110032

I.D. No. 66/2013

Sh. Harrison Thomas,
S/o Late Kallan John, R/o D-1/A/B-121,
Gali No. 5, Mahabir Enclave,
Near Bankey Bihari Mandir, New Delhi -110042

Versus

The Executive Engineer,
ACD-III, CPWD,
Vidyut Bhawan,
New Delhi.

AWARD

The Central Government in the Ministry of Labour vide Letter No.L-42012/26/2013-IR(DU) dated 20.06.2013 referred the following Industrial Dispute to this Tribunal for adjudication :-

"Whether the action of the management of CPWD in terminating the services of Sh. Harrison Thomas S/o Kallan John w.e.f. 30.08.1992 is just, fair and legal? To what relief the workman concerned is entitled to?

On 8.7.2013 reference was received in this Tribunal. Which was register as I.D No. 66/2013 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

On 12.08.2013 workman filed claim statement before this Tribunal. Where-in he prayed as follows:-

In view of the above facts and circumstances of the case, the workman most humbly and respectfully prays for the following among other relief:

i. To pass an award for reinstatement of the workman w.e.f. 30.08.1992 with full back wages.

ii. To pass an award for regularization of his services w.e.f. the date of regularization of junior workmen.

iii. Any other relief which may kindly be deemed fit and proper to meet the end of justice.

After service of notice management filed written statement on 24.03.2014. Where-in management prayed as follows:-

"Management denied the allegations of workman and prayed for dismissal of claim statement."

Against written statement workman filed rejoinder. Wherein he re-affirmed the contents of claim statement.

On 18.6.2014 following issues were framed:-

1. Whether the action of the management of CPWD in terminating the services of Sh. Harrison Thomas S/o Late Kallan John w.e.f. 30.08.92 is just, fair and legal ? If so its effect?

2. To what relief the workman is entitled to?

Thereafter Ld. A/R for the workman filed his affidavit in his evidence.

Which was tendered by workman as WW1 on 13.10.2014 and he was cross-examined & his cross-examination was concluded on 28.01.2015.

Management in support of its case filed affidavit of MW1 Sh. A.K. Nagpal, S/o Sh. D.R. Nagpal on 15.10.2015. Who tendered his affidavit and was partly cross-examined on 8.3.2016.

On 4.5.2016 management witness was further cross-examined and his cross-examination concluded.

On 14.06.2016 written arguments filed by workman.

In reply of written arguments of workman, management on 13.02.2017 filed written arguments.

In the light of contentions and counter contentions I perused the pleadings any evidence of parties including contents of written arguments filed on behalf of workman and management.

My Issue-wise findings are as follows:-

Findings on issue no. 1

Burden to prove issue no.1 lies on management. Management in its evidence prove it by way of adducing its evidence. Through which management proved that workman Sh. Harrison Thomas, was challaned u/s 392 IPC (for offence of robbery). He was prosecuted for the said offence.

Workman claimed reinstatement since 30.08.1992 but workman has not filed judgment of acquittal of aforesaid robbery case. Has it been filed by workman. I would have perused the contents of judgment of acquittal. Through which I could come to conclusion whether accused was acquitted on the ground of benefit of doubt or due to hostility of witnesses or it was clear cut case of acquittal of accused from the offence of robbery but accused has not filed certified copy of judgement so workman with-hold material evidence. Therefore adverse inference u/s 114 (g) Indian Evidence Act is drawn against accused and it is presumed that accused was not clear cut acquitted. Non filing of certified copy of judgment cannot be brushed aside as trivial matter and it is codified law that robbery is an offence of moral turpitude due to which major misconduct of accused was not excusable and on this count accused is not entitled for re-instatement in service or for other reliefs.

In the instant case where-in workman was only daily wager. Had he been regular employee his case may be considered up-to some extent but not for his re-instatement.

On the basis of aforesaid discussion I am of considered view that issue No. 1 is liable to be decided against workman and in favour of management. Which is accordingly decided.

Findings on Issue No. 2.

This issue is relating to relief to workman so burden to prove it lies on workman.

It is relevant to mention here that material issue in the instant case was issue no. 1. Which has already been decided in favour of management and against workman.

So this issue is also liable to be decided in favour of management and against workman. Which is accordingly decided.

Reference is liable to be decided in favour of management and against workman. Which is accordingly decided. Claim statement is dismissed.

Award is accordingly passed.

Dated : 28.03.2017

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 7 जून, 2017

का.आ. 1449.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर, बीएसएनएल, करनाल एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. II, दिल्ली के पंचाट (संदर्भ संख्या 120/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.04.2017 को प्राप्त हुआ था।

[सं. एल-40012/70/2005-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 7th June, 2017

S.O. 1449.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 120/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, BSNL, Karnal and their workman, which was received by the Central Government on 26.04.2017.

[No. L-40012/70/2005-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II, KARKARDOOMA COURT COMPLEX, DELHI-110032

I.D. No. 120/2005

Sh. Ram Prasad, S/o Sh. Jeet Singh,
Vill. Purangarh, Teh. Radour,
Kurukshetra

Versus

The General Manager, BSNL,
Distt. Karnal,
Karnal.

AWARD

Reference Order No.L-40012/70/2005 IR (DU) dated 10.11.2005 from the Ministry of Labour, Government of India, New Delhi received in the Tribunal.

Then it was register as ID. No. 120/2005 and fixed 30.03.2006 and notice to claimant /workman was issued to file his claim statement.

Workman /claimant filed claim statement on 7.06.2006. Where-in he prayed as follows:-

i. Present claim petition may kindly be accepted and the termination of the applicant namely Ram Prasad Son of Sh. Jeet Singh. Causal Labourer in the Telecommunication Department under the B.S.N.L., Kurukshetra may be declared as illegal:

ii. respondents may be directed to consider the case of the applicant for the regularization of his services in view of the policy framed by the department dated 1.10.1989 as also the policies dated 10.02.1995 and 27.01.2000.

iii. any other relief, to which this Hon'ble Tribunal may deem fit in the facts and circumstances of the case, may also be granted to the applicant.

On 14.02.2006 management filed reply. Copy of which supplied to workman prayer of reply is as follows:-

"It is humbly prayed that the claim application of the applicant may kindly be dismissed with heavy cost.

On 9.01.2007 workman filed rejoinder. Where-in he re-affirmed the contents of claim statement.

On 14.03.2007 workman filed his affidavit in his evidence. Copy supplied to management.

Fixed 9.5.2007 for cross-examination of workman.

On 8.8.2007 workman was cross-examined and his cross-examination concluded.

Fixed 27.02.2008 for Management evidence.

On 11.4.2008 affidavit of management witness filed.

On 7.05.2008 MW1 was cross-examined & his cross-examination concluded.

On 27.08.2015 in compliance of my previous order workman filed copy of order of C.A.T which is introduced on record.

Copy of which supplied to Sh. Bhagat Ram.

On 7.12.2015 WW1 tendered his affidavit and he was cross-examined and his cross-was concluded.

Workman evidence closed.

Fixed 25.1.2016 for management evidence.

On 11.07.2016 affidavit of management witness filed.

Fixed 11.08.2016 for tendering of affidavit and cross-examination of management witness.

On 11.08.2016 MW1 tendered his affidavit and his cross-examination was deferred to 20.10.2016.

On 28.12.2016 MW1 was cross-examined and his cross-examination was concluded. Management closed its evidence.

Fixed 10.01.2017 for arguments.

On 10.01.2017 written argument by workman filed.

Copy of which supplied to clerk of Ld. A/R for the management.

On 2.2.2017 I reserved award.

In the light of contentions and counter contentions mentioned in the written arguments filed by workman on 10.01.2017 and written argument of management filed much prior to 10.01.2017 by management.

I perused the pleadings of parties including evidence, judgment of Hon'ble CAT Chandigarh, representationof workman in the light of that judgment and information of disposal of representation to workman in-compliance of order of Hon'ble CAT.

As case is being proceeded on the basis of questions of determination mentioned in the schedule of reference.

So my question of determination wise findings are as follows:-

Findings on question of determination No. 1

Question of determination no. 1 is as follows:-

"Whether the action of the management of BSNL , Karnal in terminating the services of Sh. Ram Prasad S/o Sh. Jeet Singh, Casual Labourer w.e.f April 1987, is just and legal?"

Burden to prove it lies on management of B.S.N.L.

To prove it management examined its witness as MW1 who filed copy of letter Exht. MW1/A sent to workman Sh. Ram Prasad . Through which management informed to workman that his representation is being considered in view of orders of Hon'ble C.A.T Chandigarh.

Other information of aforesaid letter are as follows:-

"You have desired the benefit of regularization under the scheme framed by the Department dated 27.01.2000. In this regard it is made clear that there are no such instruction /circular /scheme framed by the Department of the said date. In fact the scheme for the regularization has been introduced vide DTS letter No. 269-94/98-STN –II dated 29.09.2000 & C.G..M.T HR Ambala letter No. E&R/ EM-1702/TSMs /2000/16 dated 27.11.2000 which says as under:-

In pursuance of DTS New Delhi letter No. 269-94/98 –STM-II dated 29.9.2000, the C.G.M.T HR Ambala has been pleased to regularize all the Casual Labourers working in the Department, including those who have been granted temporary status w.e.f 01.10.2000 in the following order:-

i) All casual labourers who have been granted temporary status upon the issuance of DOT/DTS ND orders No. 269-4/93 –STM-II dated 12.02.1999 and 269-13 /99 –STM –II dated 09.06.2000 & C.G.M. T. HR Ambala office letter No. E& R / Ex-70/Rig/ Court /I /Pt / 56 dated 18.06.1999.

ii) All full time casual labourers which is nil for Karnal SSA.

As per the above instructions the benefit of regularization to be given only to those casual labourers who are working in the Department and to those who have been granted temporary status . In your case you are neither working in the department nor have been granted temporary status. Thus being not eligible you are not entitled to the benefit of these orders.

Further more it is pertinent to highlight the entire scheme of granting of temporary status in view of instruction issued from time to time. Grant of temporary status and regularization scheme was introduced vide DOT Circular No. 269-10/89-STM dated 07.11.1989 which came into force w.e.f 01.10.1989. According to that, a temporary status would be conferred on the all the Casual Laborers who are currently employed and who have rendered a continuous service of at least one year, out of which they must have been engaged on work for a period of 240 days (206 days in the case of offices observing 5 days week) such casual laborers will be designated Temporary Mazdoor, You left the Department in June, 1988, as such being not working in the Department from the date of enforcement of this scheme i.e. 1.10.1989, you are not eligible to be considered in the scheme.

Vide DOT letter No. 269-4/93-STN –II dated 17.12.1993 further relaxation was issued for the persons who were engaged as Casual Labourers after 30.03.1985 and up to 22.06.1988 to be considered for grant of temporary status subject to that they are still continuing for such works where they were initially engaged and who are not absent for the last more than 365 days counting from the date of issue of this letter. Here-in-too you are not eligible to be benefited for the scheme /relaxation, being you left the department in June, 1988.

Moreover your representation is hopelessly time barred. In view of the above facts and due consideration no relief can be granted to you as desired by you in your representation.

On the basis of details mentioned in the letter sent to you. You were not found eligible to be benefited for the scheme /relaxation, as you left the job in June 1988 and as such being not working in the Department from the date of enforcement of scheme i.e. 1.10.1989. Hence you were not found eligible to be considered in the scheme. Due to which no relief was granted by management to you as desired by you in your representative.

On the basis of aforesaid discussion I am of considered view that question of determination no. 1 is liable to be decided in favour of management and against workman. Which is accordingly decided.

Finding on question of determination no. 2.

Which is relating to relief to workman. But question of determination no. 1 has already been decided in favour of management and against workman so there is no option to this Tribunal except to decided issue no. 2 in favour of management and against workman which is accordingly decided.

Reference is liable to be decide against workman and in favour of management.

Which is accordingly decided. Claim statement is dismissed.

Award is accordingly passed.

Dated : 07.03.2017

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 7 जून, 2017

का.आ. 1450.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आयुक्त, पूर्व दिल्ली नगर निगम, शाहदरा, दिल्ली एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. II, दिल्ली के पंचाट (संदर्भ संख्या 05/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.04.2017 को प्राप्त हुआ था।

[सं. एल-42011/110/2013-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 7th June, 2017

S.O. 1450.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 05/2014) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the Commissioner, East Delhi Municipal Corporation, Shahdara, Delhi and their workman, which was received by the Central Government on 26.04.2017.

[No. L-42011/110/2013-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II, KARKARDOOMA COURT COMPLEX, DELHI-110032

I.D. No. 05/2014

Sh. Naresh Chand S/o Late Beni Prasad
As represented by MCD General Mazdoor Union
C/o Room No.95, Barrack No.1/10,
Jam Nagar House, New Delhi-11 …Workman

Versus

The Commissioner
East Delhi Municipal Corporation,
Udyog Sadan, Plot No.419,
Near Patparganj, Shahadra, Delhi …Management

AWARD

The Central Government in the Ministry of Labour, New Delhi- 110001 has referred the following dispute for industrial adjudication to this tribunal vide its notification No. L-42011/110/2013-IR(DU) Dated 20.01.2014.

> "Whether the Action of the management of Municipal Corporation of Delhi is not granting the pay scale of Rs.3050-4590/- w.e.f. 01.08.2003 to Sh. Naresh Chand S/o. Sh. Beni Prasad with all consequential benefits is justified or not? If not, what directions are necessary in this respect?"

On 07.02.2014 reference was received in this Tribunal. Which was received ID.No. 05/2014 and claimant/workman was called upon to file claim statement within fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman/claimant filed claim statement on 28.05.2014. Wherein he prayed that the salary of Garden Choudhary as the workman has been performing his duty in the pay scale of Rs. 3050-4590 w.e.f. 01.08.2003 as per the reference order of the Ministry of Labour and also revised from time to time alongwith all consequential benefits.

Against claim/statement management filed its written statement on 09.01.2015

On the basis of its contents it was prayed that dispute is not maintainable and is liable to be dismissed.

Against written statement workman filed rejoinder. Wherein he reaffirmed contents of claim/statement.

On 29.05.2015 I framed following seven issues:-

1. Whether the action of management of Municipal Corporation of Delhi as not granting the pay scale of Rs. 3050-4590 w.e.f. 01.08.2003 to Sh. Naresh Chand, S/o Sh. Beni Prasad with all consequential benefits is justified or not? If so its effect?

2. Whether the workman union has no Locus standi to raise the present dispute? If so its effect?

3. Whether prior to raising the dispute. No demand notice has been served upon the management? If so its effect?

4. Whether the workman is not working with the management as garden chaudhary? If so its effect?

5. Whether the dispute is not maintainable being bad in law? If so its effect?

6. If not granting the pay scale of Rs. 3050-4590 w.e.f. 01.08.2003 to workman Sh. Naresh Chand then what directions are necessary to be issued to management?

7. To what relief workman is entitled and from which date?

Fixed 17.05.2015 for workman evidence.

Workman filed his affidavit in his evidence. Which was tendered by workman alongwith certain documents.

He was cross-examined.

Thereafter management filed affidavit of MW1 sh. Vijay Pal Sharma.

Which was tendered by management witness no.1 aongwith certain documents.

I have heard the oral arguments of Ld. A/Rs on 02.02.2017. Workman also filed written arguments. Copy of which supplied to Ld. A/R for managements for reply before passing of Award.

Contents of written arguments of workman are as follows:-

1. That the appropriate Government i.e. GOI, Ministry of Labour, New Delhi – 110001 has referred the following dispute for industrial adjudication before this Hon'ble Tribunal vide its Order No. L-42011/110/2013-IR(DU) Dated 21.01.2014:

SCHEDULE

"Whether the action of the management of Municipal Corporation of Delhi is not granting the pay scale of Rs.3050-4590/- w.e.f. 01.08.2003 to Sh. Naresh Chand S/o Sh. Beni Prasad with all consequential benefits is justified or not? If not, what direction are necessary in this respect?"

2. That Sh. Chand workman was allotted the work of Chaudhary w.e.f. 01.08.2003 by the competent authority. As per the order of Civil Line Zone of Horticulture the work has been allotted to the workman of work of Garden Chaudhary which is exhibit WW1/1. The services of the workman was transferred to the Sahahadra North Zone for the work of Acting Chaudhary and he was superannuated w.e.f. 31.01.2017 and he is entitled to the wages of Acting Chaudhary from the date i.e. 01.08.2003 as per WW1/1 and as per the judgement of Hon'ble Division Bench of High Court of Delhi in W.P. No.7947/2010 in the matter of MCD Vs. Sultan Singh & ors. And the same was dismissed and the Special Leave Petition before the Hon'ble Supreme court of India being Special Leave to Appeal (C) No. 20069/2011 and the said Special Leave Petition has dismissed and withdrawn on 09.04.2012. This workman is also similarly situated doing the work of Chaudhary is entitled the similar benefits.

3. That as per the workman's evidence he has proved that he was allotted the work of Acting Chaudhary w.e.f. 01.08.2003 and his name is appearing at Srl. 29 in Exhibit WW1/1. The workman proved his case in his evidence also.

4. That Sh. Vijay Pal Sharma MW1 also admitted in the cross-examination that it is correct that the workman WW1/1 has been allotted the work by Civil Line Zone and further in cross examination dated 04.01.2017 stated that it is correct that the workman performed the duty of Garden Chaudhary in shahadra North also. The cross-examination of MW1 is reproduced as under:

"I do not know the list of WW1/2 the same is issued by the Civil Line Zone. It is correct that the workman occasionally transfer to one zone to another zone in MCD. It is correct that WW1/1 is also issued by the Civil Line Zone. <u>It is correct that the workman performed the duty of Garden Chaudhary</u>. It is incorrect to suggest that I filed false and frivolous affidavit to support the

management. It is correct that the Acting Chaudhary has got the benefits in my departments. Number of these person about 5,6."

5. In view of the above admitted facts the workman is entitled to the wages of Acting Chaudhary in the pay scale of Rs.3050-4590/- w.e.f. 01.08.2003 revised from time to time up to 31.01.2017 i.e. the date of his superannuation along with all consequential benefits.

Perusal of evidence makes it crystal clear that evidence of workman is reliable, credible and required evidence in this case. While evidence of management not at all sufficient to rebut the evidence of workman. So this Tribunal has no option except to decide the reference in favour of workman and against management.

Which is accordingly decided. And claim statement is allowed.

Management is directed to grant salary of Garden Chaudhary to workman Sh. Naresh Chand since 01.08.2003 alongwith all consequential benefits.

Compliance has to be done by management within 2 months after expiry of period of available remedy against the instant Award.

Dated : 19.04.2017

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 7 जून, 2017

का.आ. 1451.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार प्रशा. कमांडेंट ऑफिसर, आर्मी कैंप स्टेशन, गुड़गांव एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. II, दिल्ली के पंचाट (संदर्भ संख्या 24/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.04.2017 को प्राप्त हुआ था।

[सं. एल-14012/16/2009-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 7th June, 2017

S.O. 1451.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 24/2010) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the Admn. Commandant Officer, Army Camp Station, Gurgaon and their workman, which was received by the Central Government on 26.04.2017.

[No. L-14012/16/2009-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II, KARKARDOOMA COURT COMPLEX, DELHI-110032

I.D. No. 24/2010

Sh. Mahesh, S/o Sh. Prem Mashih,
Vill- Navada, P.O. – Saidpur,
C/o Sh. Dhaneshwar Tyagi,
Lok Mazdoor Sanathan (LMS),
H.No. 647/21, Shanti Nagar, Gurugoan

Versus

The Admn. Commandant Officer,
Army Camp Station,
H. Q Dundahera, Gurgoan

NO DISPUTE AWARD

The Central Government in the Ministry of Labour vide Letter No. L-14012/16/2009-IR(DU) Dated 17.06.2010 referred the following Industrial Dispute to this Tribunal for adjudication:-

"Whether the contract between the management of Admn Commandant, Camp Station, HO- Dundahera, and their contractor with regard to employment of Sh. Mahesh is sham and bogus? If yes, whether the action of the management in terminating the services of the said workman is legal and justified? If not, what relief the workman is entitled to?"

On 29.06.2010 reference was received in this Tribunal. Which was register as I.D. No. 24/2010 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

On 12.07.2011 workman filed his claim statement. Fixed 29.08.2011 for filing of written statement.

On 22.04.2014 management filed written statement. Fixed 07.07.2014 for filing of rejoinder.

On 07.07.2014 workman filed rejoinder. Fixed 19.08.2014 for framing of issues.

I framed following issues on 02.09.2014:-

(1) Whether the contract between the management of Admn. Commandant, Camp Station, HQ – Dundahera, and their contractor with regard to employment of Sh. Mahesh is Sham and bogus? If yes, whether the action of the management in terminating the services of the said workman is legal and justified? If So its effects?

(2) To what relief the workman is entitled to and from which date?

Thereafter I fixed 14.10.2014 workman evidence.

Several opportunities given to workman to adduce his evidence but he failed to adduce his evidence. Hence his evidence has been closed on 15.11.2016.

I fixed 06.12.2016 for management evidence/ arguments. But inspite of several opportunities management also failed to adduce its evidence.

Hence I reserved the Award on 21.03.2017 with liberty to Ld. A/R for the management to raised his argument before passing the Award. Sh. Sanjeev Yadav Ld. A/R for management argued on behalf of management.

In want of evidence of both parties is a fit case to pass "No Dispute Award".

Which is accordingly passed.

Dated : 13.04.2017

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 7 जून, 2017

का.आ. 1452.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ए.डी.सी. स्वास्थ्य, एमसीडी, सिविल केंद्र व अन्य, नई दिल्ली एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. II, दिल्ली के पंचाट (संदर्भ संख्या 51/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.04.2017 को प्राप्त हुआ था।

[सं. एल-42011/34/2013-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 7th June, 2017

S.O. 1452.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 51/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the A.D.C. Health, mcd, Civil Centre and others, New Delhi and their workman, which was received by the Central Government on 26.04.2017.

[No. L-42011/34/2013-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II, KARKARDOOMA COURT COMPLEX, DELHI-110032

I.D. No. 51/2015

Sh. Ravi Kumar, S/o Sh. Raju,
C/o The General Secretary,
Delhi Nagar Nigam Shramik Sangh,
5239-Ajmeri Gate.

Versus

1. A.D.C Health,
   MCD, Civil Centre, Minto Road,
   New Delhi-110002.

2. M.H.O.
   MCD, Civil Centre, Minto Road,
   New Delhi-110002.

3. Dy. M.H.O.,
   MCD, Civil Centre, Minto Road,
   New Delhi-110002.

NO DISPUTE AWARD

The Central Government in the Ministry of Labour vide notification No L-42011/34 /2013-IR(DU) dated 20.06.2013 referred the following Industrial Dispute to this Tribunal for adjudication :-

> "Whether the action of the management of Municipal Corporation of Delhi in terminating the employment of Sh. Ravi Kumar S/o Sh. Raju w.e.f. 19.10.2009 is legal and justified? To what relief the concerned workman is entitled to?"

On 13.04.2015 reference was received in this Tribunal. Which was register as I.D No. 51/2015 and claimants were called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workmen/claimants, not filed claim statement inspite of several opportunities.

Several opportunities given to workman as well as management but neither workman nor management filed claim statement / Response to the reference.

In this background there is no option to this Tribunal except to pass No Dispute Award because parties are not interested to file their respective pleadings.

On the basis of which none of the party can be directed to adduce its evidence.

No Dispute Award is accordingly passed.

Dated : 29.03.2017

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 7 जून, 2017

का.आ. 1453.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, उत्तरी भारत वस्त्र अनुसंधान संघ (निट्रा), गाजियाबाद एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. II, दिल्ली के पंचाट (संदर्भ संख्या 46/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.04.2017 को प्राप्त हुआ था।

[सं. एल-42011/7/2011-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 7th June, 2017

S.O. 1453.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 46/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the Director, Northern India Textile Research Association (NITRA), Ghaziabad and their workman, which was received by the Central Government on 26.04.2017.

[No. L-42011/7/2011-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II, KARKARDOOMA COURT COMPLEX, DELHI-110032

I.D. No. 46/2011

Sh. Virendra Rawat(President),
NITRA Employees Association,
Sector-23, Sanjay Nagar,
Ghaziabad

Versus

The Director,
Northern India Textile Research Association (NITRA),
Ghaziabad.

NO DISPUTE AWARD

The Central Government in the Ministry of Labour vide Letter No.L-42011/7/2011-IR(DU) dated 24.05.2011 referred the following Industrial Dispute to this Tribunal for adjudication :-

"Whether the demands of the (Northern India Textile Research Association (NITRA) Union for regularization of Service Condition and formation of standing orders under Industrial Employment (Standing Orders)Act, 1946 is legal and justified? What relief the workman of NITRA are entitled to?"

On 30.6.2011 reference was received in this Tribunal. Which was register as I.D No.46/2011 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

On 3.9.2012 workman filed claim statement before this Tribunal. Where-in she prayed as follows:-

"It is therefore, most respectfully prayed that this Learned Tribunal may graciously be pleased to initiate appropriate legal proceedings in terms of the provisions of the Industrial Dispute Act, 1947."

Management filed written statement on 17.01.2013. Where-in management prayed as follows:-

"It is therefore most respectfully prayed that this Hon'ble Tribunal may pleased to dismiss the claim with heave cost or pass such and further order as this Hon'ble Court deem fit and proper in the facts and circumstances for the case."

Against written statement workman filed rejoinder. Wherein he re-affirmed the contents of claim statement.

On 17.04.2013 following issues were framed:-

1. Whether the dispute has not acquired status of an industrial dispute for want of espousal by a union?
2. As in terms of reference.

No other is made out. Fixed 11.6.2013 for workman evidence.

Workman in support of his case filed his affidavit. But several opportunities given to workman for tendering of his affidavit and cross-examination but he failed. So I closed the right of workman evidence and I fixed 5.12.2016 for management evidence.

On 5.12.2016 Ld. A/R for the management expressed his desire not to adduce any evidence on behalf of management and then I heard the arguments.

Ld. A/R for the management.

Thereafter reserved the award.

Inwant of evidence no dispute award is liable to be passed.

Which is accordingly passed.

Dated : 29.03.2017

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 7 जून, 2017

का.आ. 1454.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुख्य सुपरिंटेंडेंट, मद्रास एटॉमिक पावर स्टेशन व अन्य, चेन्नई एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 17/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.05.2017 को प्राप्त हुआ था।

[सं. एल-42012/11/2016-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 7th June, 2017

S.O. 1454.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 17/2016) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in Annexure, in the industrial dispute between the employers in relation to the Chief Superintendent, Madras Atomic Power Station and others, Chennai and their workman, which was received by the Central Government on 05.05.2017.

[No. L-42012/11/2016-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Monday, the 24th April, 2017

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 17/2016

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Madras Atomic Power Station and their workman)

BETWEEN :

Sri N. Santhanam	:	1st Party/Petitioner

AND

1.	The Chief Superintendent Madras Atomic Power Station, Kalpakkam Kanchipuram District Chennai-603102	:	2nd Party/1st Respondent
2.	The Management Madras Atomic Power Station Coop Canteen Kalpakkam, Kanchipuram District Chennai-603102	:	2nd Party/2nd Respondent

Appearance :

For the 1st Party/Petitioner	:	Sri S.T. Varadarajulu, P. Ganesh Murthi, Advocates
For the 2nd Party/1st Management	:	M/s. N. Vijay Shankar, Advocates.
For the 2nd Party/2nd Management	:	Set Ex-parte

AWARD

The Central Government, Ministry of Labour & Employment, vide its Order No. L-42012/11/2016-IR (DU) dated 26.02.2016 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the non-absorption / termination of the services of N. Santhanam by the Management of MAPS Employees Cooperative Society and Madras Atomic Power Station, Kalpakkam without any compensation was proper, legal and justified? lIf not, to what relief Sri Santhanam is entitled to?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 17/2016 and issued notices to both sides. The petitioner and the First Respondent have entered appearance and filed Claim and Counter Statement respectively. The petitioner had filed rejoinder in answer to the Counter Statement. The Second Respondent has remained ex-parte.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner joined the services of the Second Respondent on 10.10.1986 as hand receipt cleaner. He was unjustly terminated from service on 01.09.1999. He had put 13 years of continuous service. In 1993, the Respondent regularized the services of all the employees of the Second Respondent and brought them in the scale of pay, but the petitioner was denied such regularization. He continued to work as daily rated hand receipt cleaner. Though representation was given by the petitioner to regularize his service this was not heeded to. He was terminated all of a sudden without reason The First Respondent is a factory under the Factories Act. The Second Respondent Canteen was established under Section-48 of the Factories Act. The Government of India had issued notification in 1979 to treat all posts in Canteen and Tiffin Room run by department w.e.f. 01.10.1979 as holder of civil posts. The Second Respondent is registered under the Director of Canteens. So the Government of India is the appropriate government for the Second Respondent. It is incorrect to state that the petitioner was employed through Contractor. Termination of the petitioner from employment is in violation of Section-25(F) of the ID Act. An Award may be passed directing the Respondent to reinstate the petitioner in service with backwages, continuity of service and attendant benefits.

4. The Respondent has filed Counter Statement contending as below:

The First Respondent is a Public Sector Undertaking. The petitioner is a worker who was engaged by the Second Respondent registered under the Tamil Nadu Cooperative Societies Act. The Cooperative Canteen was started by the employees of the First Respondent to cater to their requirements. The Managing Committee of the Canteen comprised of personnel elected from among the members of the Society. It was run on a no loss, no profit basis. It does not invoke the provisions of Industrial or Factories Act. Casual labours were employed by the Committee on temporary requirements. Wages will be given by the Management. The First Respondent never intervened in the affairs of the Society except as the Principal Employer. The petitioner has no locus-standi to demand appointment on regular basis on the pay-rolls of the First Respondent. The Second Respondent had engaged the petitioner to meet the requirements of extra jobs during the shut-down jobs. The work carried out by him is of temporary nature. While taking as casual labour no recruitment procedure was followed. The petitioner is not entitled to any relief.

5. The petitioner has filed rejoinder denying the allegations in the Counter Statement and reiterating his case in the Claim Statement.

6. The evidence in the case consists of oral evidence of WW1 and MW1 and documents marked as Ext.W1 to Ext.W9

7. **The points for consideration are**:

(i) Whether the termination of the petitioner is justified?

(ii) What, if any is the relief to which the petitioner is entitled?

The Points

8. The claim of the petitioner is that he was working as Hand-Receipt Cleaner in the service of the Second Respondent during the period from 10.10.1986 to 01.09.1999. According to him he was suddenly and unjustly terminated from service on 01.09.1999. He has claimed reinstatement in service, but without specifying in the service of which Respondent.

9. The Second Respondent has remained ex-parte. The First Respondent has contended in the Counter Statement that it has nothing to do with the engagement of the petitioner and it was done by the Second Respondent only. The

Second Respondent is said to have been constituted under the Tamil Nadu Societies Registration Act to cater to the needs of the employees of the First Respondent. According to the First Respondent its position was that of a principal employer only.

10. The petitioner has stated in the Claim Statement that the First Respondent is a factory under Section-2 of the Factories Act and the Second Respondent Canteen was established under the Factories Act. It is further stated by the petitioner that there is a notification by the Government by which it was decided to treat all posts in Canteen and Tiffin Rook run by departments as civil posts w.e.f. 01.10.1979. However, the petitioner has not produced the so-called notification or has produced any document to show that the Second Respondent is a Canteen established under the Factories Act.

11. The petitioner has been examined as WW1. Even in the Claim Statement he has stated that he was in the service of the Second Respondent. During the cross-examination he has admitted that he was paid salary by the Second Respondent. He was not issued with any appointment order, neither by the Second Respondent nor by the First Respondent. The documents produced by the petitioner also would show only his employment by the Second Respondent. These documents do not reveal any relationship between the petitioner and the First Respondent as employee and employer. The petitioner having failed to establish employer-employee relationship with the First Respondent, the First Respondent could not be cast with any liability on account of the alleged termination of the petitioner from service.

12. As stated earlier, what all documents produced by the petitioner reveal only his employment by the Second Respondent. Is the petitioner entitled to any relief with the second Respondent based on these documents? Ext.W1 (Page-1) is the hand-receipt pay bill of the Second Respondent for the period from 27.05.1987 to 26.06.1987. In this the petitioner is also named as one of the workmen. As seen from this the petitioner has worked for 28 days during this period. The next page which does not show any period shows him to have worked for 24 days. Page-3 reveals that he has worked for 18 days during the period from 01.05.1987 to 26.05.1987. Pages-4, 5 and 6 are also HR Pay Bills for different period. But the name of the petitioner is not there in any of these pages. Ext.W2 is a certificate said to be issued by the Manager of the Canteen on 13.11.1990. This states that the petitioner was working as Cleaner in the Canteen from 10.10.1986 to 30.12.1987. Ext.W3 issued on 03.12.1992 also is by the same Manager. This certificate states that the petitioner had been working during the period from 1987 to till date. One does not know why the Manager has not stated anything about the employment of the petitioner after 1987 in Ext.W2 even though it was issued in November 1990. Ext.W4 contains a series of Gate Passes issued by the First Respondent. These are described as Photo Pass for Non-Departmental Personnel. In many of the these Gate Passes the validity period of the pass is also shown. The fact that he is working in the Canteen also is seen in this. On going through the pass it is seen that the petitioner was at the Canteen during 1992, 1993, 1994, 1995. There are two Gate Pases during the period of 1999 also. The Gate Passes for the intervening period i.e. from 1995 to the middle of 1999 are not seen produced. Ext.W7 is payment voucher for the month of August 1999 showing payment of Rs. 2096/- and also voucher for July 1999 showing payment of 1100/-. These documents though of intermittent period would probabalize the case of the petitioner that he was working in the Canteen on Hand-Receipt Payment from 1987 and was there even during 1999 at which time he was terminated from service. The Second Respondent has not come forward to deny the case of the petitioner. So it is very much established that the petitioner was in continuous service of the Second Respondent from 1987 at least and was there throughout.

13. The Second Respondent has not come forward to state that the termination of the petitioner was for valid reason. The case of the petitioner that the termination was in violation of Section-25F is not rebutted also.

14. What is the relief to be granted to the petitioner? It is apparent even from the admission made by the petitioner and also the evidence given by MW1, the HR Manager of the First Respondent that the Second Respondent Canteen run by the Society is not running the Canteen now. The work of the Canteen has been outsourced since then. The petitioner cannot be directed to be in the service of an establishment which has already been outsourced. So the available remedy for the petitioner is compensation only. The petitioner had been working for the Second Respondent for long 12 years. Taking this into account, compensation payable to him is fixed as Rs. 2,00,000/-

On the basis of the above discussion the Second Respondent is directed to pay the petitioner Rs. 2.00 lakhs as compensation within two months of the publication of the Award. In default the amount will carry interest at the rate of 7.5% per annum from the date of the Award.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 24th April, 2017)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined :

For the 1st Party/Petitioner : WW1, Sri N. Santhanam

For the 2nd Party/Respondent : MW1, Sri T. Nirmala Devi

Documents Marked:

On the Petitioner's side

Ext.No.	Date	Description
Ext.W1	1987-88	HR Pay Bill
Ext.W2	13.11.1990	Service Certificate issued to the petitioner
Ext.W3	03.12.1992	Service Certificate issued to the petitioner
Ext.W4	-	Gate Pass given to the petitioner
Ext.W5	10.04.1995	Representation given by the petitioner
Ext.W6	07.02.1996	List of Co-Workers who were given regular employment
Ext.W7	1999	Payment Vouchers
Ext.W8	10.09.1999	Representation given by the petitioner
Ext.W9	15.09.2014	Order passed in WP No. 14063 of 2008

On the Management's side

Ext.No.	Date	Description
	Nil	

नई दिल्ली, 7 जून, 2017

का.आ. 1455.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार रजिस्ट्रार, इलाहाबाद विश्वविद्यालय, इलाहाबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 42/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.03.2017 को प्राप्त हुआ था।

[सं. एल-42012/72/2015-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 7th June, 2017

S.O. 1455.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 42/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in Annexure, in the industrial dispute between the employers in relation to the Registrar, Allahabad University, Allahabad and their workman, which was received by the Central Government on 07.03.2017.

[No. L-42012/72/2015-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 42/2015

Ref.No. L-42012/72/2015-IR(DU) dated 21.04.2015

BETWEEN :

The Director
M/s. Fighting Four Security Services Pvt. Ltd.
FF, 59, 88, Khajana Shopping Complex
Aashiana
Lucknow-226012 (U.P.)

AND

1. The Registrar
Allahabad University
Allahabad-211002

AWARD

1 By order No. L-42012/72/2015-IR(DU) dated 21.-4.2015 Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Director, M/s Fighting Four Security Services Pvt. Ltd. Aashina, Lucknow and the Registrar, Allahabad University, Allahabad for adjudication.

2. The reference under adjudication is:

"WHETHER THE WORKMEN AS PER ANNEXURE_I, CAB NE SAID TO BE THE WORKMEN OF ALLAHABAD UNIVERSITY AND IF SO WHETHER THE TERMINATION OF SERVICES OF THE WORKMEN AS PER ANNEXURE-I, IS LEGAL AND JUSTIFIED? IF NOT TO WHAT RELIEF THE CONCERNED WORKMEN ARE ENTITLED TO AND FROM WHICH DATE?"

3. Several dates were fixed for giving the opportunity to all the workman to file their claim statement. It was gathered that efforts are being made to get this case transferred to Kanpur Court. Thereafter more than 11 dates were further fixed. Notices through registered post were issued to workmen but none appeared on their behalf. The management moved an application M-36 dated 9.1.2017 on behalf of Allahabad University, requesting therein that alleged claimants are not interested to file their claim statement before this Tribunal, therefore I.D. case should be rejected.

4. The schedule referred by Central Government pertains to the legality of alleged termination of services of workmen whose name have been mentioned in Annexure-I. Learned AR for the opposite party/Allahabad University submits that so called workmen have no locus standi, the University is unnecessarily being harassed in this case. Moreover the issue referred is not covered under the definition of dispute as per Industrial Dispute Act.. Learned AR for the opposite party Sri V.K. Gupta has stressed that the alleged workmen are not entitled to get any relief from this Tribunal.

5. Since none of the workmen has come forward to file the claim statement before this Tribunal, although sufficient opportunity has been provided and notices through registered post have also been issued, it appears that perhaps the alleged workmen are not interested in pursuing with this case further.

6. Heared Learned AR for the opposite party. Perused the record available before this court.

7. Under the circumstances mentioned hereinabove, the so called termination of services of the alleged workman, if any can not be adjudicated as illegal or unjustified. The alleged workmen are not entitled to any relief.

8. Award accordingly.

LUCKNOW
23.02. 2017

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 7 जून, 2017

का.आ. 1456.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कमांडेंट, 508, आर्मी बेस वर्कशॉप, इलाहाबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 89/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.05.2017 को प्राप्त हुआ था।

[सं. एल-14011/08/2012-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 7th June, 2017

S.O. 1456.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 89/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in Annexure, in the industrial dispute between the employers in relation to the

Commandant, 508, Army Base Workshop, Allahabad and their workman, which was received by the Central Government on 03.05.2017.

[No. L-14011/08/2012-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 89/2012

Ref.No. L-14011/08/2012-IR(DU) dated 05.12.2012

BETWEEN :

The General Secretary
Mazdoor Union 508
Army Base Workshop
Allahabad, ED-51, ADA Colony, Naini
Allahabad (U.P.)

AND

1. The Commandant
   508, Army Base Workshop,
   Allahabad Fort,
   Allahabad-211005

AWARD

1. By order No. L-14011/08/2012-IR(DU) dated 05.12.2012 Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the General Secretary, Mazdoor Union, 508, Army Base Workshop, Allahabad and the Commandant, 508 Army Base Workshop, Allahabad Fort, Allahabad for adjudication.

2. The reference under adjudication is:

"WHETHER THE ACTION OF THE MANAGEMENT IS MALAFIDE IN INITIATING DEPARTMENTAL ENQUIRY AGAINST SH. C.D. PAL, WORKMAN? IF SO, WHAT RELIEF THE CONCERNED WORKMAN IS ENTITLED FOR?"

3. The workman has stated in brief in the claim statement W-3 that he is General Secretary of the Mazdoor Union, he was suspended vide order dated 18.11.2011 wherein reference was made to another letter dated 10.10.2011 issued by LAO Sri Karunendra Singh. Later on his suspension was removed on 28.5.2012, his enquiry was kept pending for long duration, report was submitted on 13.12.2012 thereafter the petitioner moved an application/reply dated 15.12.2012, the then Commandant was transferred but his successor also did not take any action on the enquiry report but his service was not regularized and salary pertaining to the period was also not paid; petitioner has suffered mental agony and financial hardship as well.

4. The petitioner has further asserted that 7 I.D. cases are pending between the management and Union, and in violation of Rule 33 of the I.D. Act., the workman who is also General Secretary of the Mazdoor Union was suspended unauthorizedly. With the aforesaid pleadings request has been made for disbursement of the salary w.e.f. 18.11.2011 to 30.05.2012, to summon as witness the S.E, LAO Sri Karunendra Singh and Brig. Tumul Verma. Further prayer has also been made to punish the Commandant, 508 Army Base Workshop, Allahabad. Several annexures have been enclosed alongwith claim statement.

5. The management sent a reply dated 13.3.2013 informing thereby that the disciplinary case has finally been disposed off/closed. The reply was rebutted by the workman through his detailed version dated 21.3.2013 alongwith annexures.

6. The petitioner has filed certain documents as per list W-7.

7. The management while denying the allegations leveled in claim statement, filed written Statement M-10, admitting therein that the workman Sri CD Pal is an employee of the defence installation and is covered under CCS Rule 1964; a complaint dated 10.10.2011 was received regarding mis-behaviour of the workman, preliminary investigation was ordered and thereafter he was put under suspension on 18.11.2011, mere suspension is no

punishment. The management has submitted that the matter pertains solely to the indisciplined act of Sri CD Pal as individual workman, while dispute has been raised as General Secretary, of the Mazdoor Union, the workman has abstained himself without prior permission unauthorizedly and went out side the office premises, and violated the provisions of conduct Rules. Memo/charge sheet was issued on 16.12.2013 by the then Commandor/Disciplinary Authority, memo was issued and opportunity was also provided to the workman and he has expressed his desire for personal hearing. Enquiry proceeding was completed as per Rules. Opportunity to submit representation was duly provided, final penalty of withholding the increment for 2 years with cumulative effect was imposed. The workman mis-behaved and misconducted himself; therefore the workman was finally penalized after due notice and sufficient opportunity having been provided. The workman has raised other ID cases as well. During the process of suspension Review Committee was also constituted, enquiry proceedings were submitted on 30.7.2012, statements were recorded from the complaint.

8. Opposite Party has emphasized that the matter is not covered under the I.D. Act, it is service matter between Union and management. Statutory provisions have been quoted by the opposite party. The management has requested to frame appropriate additional issues to adjudicate the award against the workman.

9. With strong denial of the allegations leveled by the opposite party the workman has filed rejoinder W-12 while reiterating pleas taken earlier. Additional written statement has also been filed by the management as per M-15 alongwith annexures.

10. The workman has submitted his affidavit W-17 in support of his pleadings. He has been thoroughly cross examined on behalf of the opposite party. The management did not file any affidavit or oral evidence of its officers.

11. The then Hon'ble Judge of this CGIT framed two preliminary issues on 17.10.2013. After giving opportunity to both the parties the issue no.1 was decided against the management vide order dated 29.12.2014 and management was directed to file list of witness and reliance on the next date. Thereafter no further evidence was adduced by the management. Rather it preferred to file written statement M-33. The workman controverted pleas taken by the management and filed an affidavit W-34 dated 28.2.2017. The opposite party has stated before the court that it does want to adduce oral evidence and has submitted that the evidence already adduced may be read.

12. Vide order dated 28.12.2014 passed by this Tribunal, it has been observed by me that no specific counter affidavit was filed by the management to controvert the facts mentioned by the workman in his affidavit, the workman was not provided sufficient opportunity to defend himself, by not supplying the copy of the complaint to the workman and also not producing complainant during the enquiry. Copy of day to day proceeding was not given to the workman. The Learned AR for the management has submitted that copies of the relevant documents and proceedings was provided to the workman. However, his submission was not supported by any document. Photo copies of the enquiry proceedings reveal that on certain dates, the initiates of the workman have been obtained but it no where reflects that copies of the material documents and the complaint were provided to him at the appropriate time.

13. The workman has relied upon on the following Rulings;

1. (1977) 2, SCC, Pradip Port Trust Vs Workmen, Page 339.
2. (2006) 3, SCC, State of UP vs Shiv Shankar Lal Srivastava Page 276.

14. Prouncements made by Hon'ble Allahabad High Court in 2009(123) FLR 201 Gynandra Pal Singh V/s Cane Commissioner and by Hon'ble Calcutta High Court in 2007 (114) FLR, page 455 Manab Kumar Guha v/s Govt. of India, are very relevant to the present context.

15. The order passed by this Tribunal on 29.12.2014 was not challenged by the management before any Hon'ble competent Court. Therefore, it has attained finality. Moreover no further documentary cogent evidence was adduced by the management although sufficient opportunity was provided by this Tribunal.

16. After having heard both the parties at length in the light of the documents and evidence available before this Tribunal, it is inferred that findings of the enquiry officer were perverse and the action of the management pertaining to the initiation of the departmental enquiry against Sri CD Pal, has not been bonafide. Rather it has been malafide and against the established principle of natural justice. The workman is accordingly entitled to get the pecuniary benefit relating to his salary etc, as per Rules. All the dues have to be paid to the workman within 10 weeks from the date of the notification of the Award, failing which the management shall also be liable to pay interest @ 6% per annum to the workman.

17. Award accordingly.

LUCKNOW
24.04. 2017

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 8 जून, 2017

का.आ. 1457.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारतीय जीवन बीमा निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 137/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.06.2017 को प्राप्त हुआ था।

[सं. जेड-16025/3/2017-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 8th June, 2017

S.O. 1457.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 137/2013) of the Central Government Industrial Tribunal/Labour Court-1, New Delhi now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Life Insurance Corporation of India and their workman, which was received by the Central Government on 02.06.2017.

[No. Z-16025/3/2017-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO. 1: ROOM NO. 38-A(GF), KARKARDOOMA COURT COMPLEX, SHAHDRA, DELHI- 32

ID NO. 137/2013

Sh. Rakesh Garg
S/o Late Sh. Suresh Garg
C/o A. Ganguly (A.R.W.)
Ch. No. D-721,
Karkardooma Court Complex,
Delhi 110032 …Workman

Versus

1. Senior Divisonal Manager,
   Life Insurance Corporation of India,
   Divisional Office-I, Jeevan Prakash
   25, Kasturba Gandhi Marg,
   New Delhi 110001

2. Zonal Manager …Management
   Life Insurance Corporation of India
   Northern Zonal Office,
   Jeevan Bharti,
   Post Box No. 630,
   Cannaught Place,
   New Delhi 110001

AWARD

1. The present claim has been filed by the workman under Section 2 A Sub Section 2 of ID Act 1947 (In Short the Act) with the averments that workman was working with LIC of India since 16.02.1987 as record clerk. He has performed his duty honestly and to the satisfaction of the management and unblemished record of service.

2. It is the case of workman that some officers of the management intentionally created atmosphere against the workman and a false and fabricated charge sheet dated 18.01.2011 was served on the workman. One of the officers of the management threatened the workman that "I will put his retirement in danger". The workman had filed to the reply on 02.02.2011. The enquiry was conducted in unfair and perverse manner and no opportunity was given to workman to self defence. The documents were also not supplied to the workman. Finally, he was held guilty and punished with heavy penalty of minimum basic pay in time scale.

3. Even thereafter, the workman was implicated in another false matter and served with another charge sheet dated 04.05.2011 on false and fabricated allegation. Workman also filed reply to the said charge sheet. He was held guilty and penalty of removal from service was imposed upon him. The workman had also filed an appeal against the order dated 27.09.2011 in aspect of charge sheet dated 04.05.2011. But the said appeal was not heard and rejected vide order dated 03.08.2012 without considering the facts and gravity of the penalty imposed on him by the management. The workman served upon the legal notice and it is clear that workman has been victimized under a pre planned strategy and conspiracy hatched against him and the so called enquiry against the workman is perverse unfair and Malafide and the same is in violation of article 14, 16 and article 39(d) of the constitution of India as well as provision of section 25-F, G and H of the Act. Finally, the workman has prayed for his reinstatement of full back wages.

4. The management filed written statement and took preliminary actions that claim of the workman is false frivolous and not maintainable the workman has suppressed various material facts. It is further alleged that workman joined as a Peon on 18.02.1987 and was promoted as record clerk on 01.11.1990. He was issued a charge sheet in the year 1996 for en-cashing personal cheques and penalty of Censure vide order dated 20.12.1996 was imposed upon him. Another charge sheet was issued to workman on 01.11.2012 for mis-appropriation of LTC advance and penalty of one decrement was imposed upon him vide order dated 27.03.2003. A warning letter dated 31.12.2007 was issued against the workman for remaining absent unauthorizedly the workman had remained absent for a period of 307 days. Finally, the warning letter dated 24.11.2009 was issued to him regarding his said unauthorized absence. The management, on merits, admitted the factum of his employment and the workman was being promoted as a record clerk on 01.11.1990. Charge sheet dated 18.01.2011 was issued to the workman regarding various acts of insubordination, non-performing of duties and issuing threatening statements against senior officers. The workman had admitted the main charges against him in his reply. The enquiry was conducted against charge No. 1(c) which was subsequently workman vide letter dated 31.05.2011 admitted all the charges leveled against him. The management denied the allegation of conspiracy etc. The penalty was imposed upon the workman vide letter dated 27.09.2011 minimum of scale and treating the period from 17.07.2010 to 23.07.2010 and from 22.09.2010 to 28.09.2010 as Dies-Non. The workman had not challenged the said penalty at any point of time by filing any appeal. Even in the present proceedings the workman challenged the penalty of Removal/Dismissal only which was imposed upon him vide order dated 13.03.2012. The management denied the averments contained in the remaining paras and further alleged that the enquiry in the present case was concluded on 10.06.2011 in view of the admission of the charges. Even after, the conclusion of the said enquiry workman submitted another letter dated 15.07.2011 to the management mentioning there in admission of charges. The plea taken by the workman regarding use of force by enquiry officers for admission of charges is totally false.

5. Against this factual background this tribunal on basis of pleading of parties vide order dated 11.12.2013 framed the following issues.

(i) Whether enquiry conducted against the claimant was just, fair and proper?

(ii) Whether punishment of removal from service commensurate to the misconduct of the claimant?

(iii) Whether claimant is entitled to relief of reinstatement in service?

6. Since issues No. 1 was treated as preliminary issues as such the workman in order to discharge the onus of this issue examined himself as ExWW1 and tendered in evidence documents WW1/1 to WW1/16. The management in order to rebut the case of workman examined Pawan kumar, Administrative Officer as Ex.MW1 who tendered his evidence MW1/1 to MW1/3.

7. **Findings of issue No. 1:-**

The initial burden to prove that enquiry is unfair or against the principal of natural justice is always upon the workman who has been found guilty by enquiry officer on account of misconduct. During the course of arguments Ld. A/R for the workman strongly urged that management has exercised lot of pressure upon him as a result of which workman was forced to admit the allegations contained in the charge sheet on Ex.MW1/A. The enquiry Officer Sh. P.L.Kochar initially gave an impression to the workman that lenient view would be taken of the entire matter. As such, workman was induced to admit the allegation contained in charge sheet Ex.MW1/1 dated 04.05.2011.

8. Per contra, Sh. Sunil Mittal Advocate appearing on behalf of the management countered the contention of the workman by urging that workman has voluntarily admitted the allegation contained in charge sheet Ex.MW1/1. As such, there was no legal requirement to conduct the regular enquiry against the workman even on the previous occasion workman has committed various acts of mis-conducts. Wherein, also punishment was awarded to the workman. The workman is in the habit of committing various acts of insubordinations, issue and facts and misbehaving with his superior officers, which has vitiated the work atmosphere in the management.

9. Before I proceed to consider the comparative the merit of the submission, it is necessary to notice the allegation of mis-conduct leveled against the workman. And the same is as under:-

आरोप पत्र

आप, श्री राकेश गर्ग, अभिलेख लिपिक, वे. क्र. 111760 शाखा सं. 11 एस. भारतीय जीवन बीमा निगम, मंडल कार्यालय–1, नई दिल्ली पद निम्नलिखित आरोप लगाया जाता है:–

दिनांक 09.03.2011 को लगभग 11 बजे पूर्वाह्न (ए. एम.) जब प्रबंधक (प्रशासन) श्री बी. एम. अग्रवाल ने आपको रिकॉर्ड रूम के सामने तीसरे तल पर शराब की बोतल, जिसमें कुछ शराब बची हुई थी, के साथ पकड़ा आप जोर से चिल्लाते हुए द्वितीय तल पर चले गए । द्वितीय तल पर पहुंचने के पश्चात् आपने श्री आर. के. जैन, मुख्य प्रबंधक एवं श्री बी. एम. अग्रवाल प्रबंधक (प्रशासन) को उनक नाम लेकर माँ व बहन की गालियां दी और उन्हें देख लेने की धमकी दी।

इस प्रकार आप अपने उपरोक्त कृत्यों द्वारा एवं सम्पूर्ण सत्य निष्ठा को बनाये रखने में अक्षम रहे है तथा निगम की सेवा को ईमानदारी एवं विश्वासपूर्ण ढंग से करने में भी असफल रहे है। आपने इस प्रकार से कार्य किया जो कि निगम के हित के लिए हानिकारक है तथा सदाचार के प्रतिकूल है। इस प्रकार आपने भारतीय जीवन बीमा निगम (कर्मचारी) विनियम, 1960 के विनियम 21 एवं 24 जो विनियम 39 (1), के साथ पढे जाएं, के प्रावधानों का उल्लंघन किया है जिसके लिए आप को एक या एक से अधिक दंडों से भारतीय जीवन बीमा निगम (कर्मचारी) विनियम, 1960 39 (1) (ए) से (जी) के अन्तर्गत है, से दंडित किया जा सकता है।

अतः आगे की कार्यवाही करने से पहले आपको यह निर्देश दिया जाता है कि आप लिखित रूप में हमें सूचित करे कि क्या आप उपरोक्त आरोपो के अंतर्गत अपना अपराध स्वीकार करते है या नहीं। यदि आप आरोपो को स्वीकार करते है आप अपने आरोपो को स्वीकार करने का लिखित बयान/स्टेटमेंट ऑफ एडमिशन और यदि नही तो आप अपना इन्कारी बयान लिखित रूप में उन प्रामणों व साक्ष्यों जिन के आधार पर आप अपना बचाव करना चाहते है के साथ इस आरोप पत्र की प्राप्ति के 10 दिनों के भीतर प्रस्तुत करे।

कृप्या ध्यान दे कि आपका लिखित बयान उपरोक्त प्रमाणों एवं साक्ष्यों की सूची के साथ निश्चित अवधि के भीतर प्राप्त न हुआ या आपका इन्कारी बयान अधोहस्ताक्षरकर्ता द्वारा संतोषजनक नहीं पाया गया तो इस विषय में आगे की कार्यवाही भारतीय जीवन बीमा निगम (कर्मचारी) विनियम, 1960 के अन्तर्गत आपको और कोई सूचना दिए बिना की जाएगी।

साक्ष्यों की प्रोविजिनल सूची संलग्न है।

नई दिल्ली में दिनांक 04/05/2011 को जारी।

10. The workman has filed reply to the charge sheet Ex.MW1/1 wherein he has denied the allegation made against him. It is also necessary to mention here that earlier also charge sheet dated 18.01.2011 was issued against the workman herein, there are allegations in subordination and indiscipline. The workman has also filed reply there to by denying the same.

11. It is clear from the perusal of the reply Ex MW1/M1 that workman has clearly admitted the allegation regarding the misconduct etc. leveled in later dated 04.05.2011. He was also asked by enquiry officer Sh. P.L.Kochar whether he wants to say anything after admitting the allegations of misconduct vide reply Ex.WW1/M1 and workman herein has clearly stated that he has carefully and without any pressure from any authority has admitted the allegation contained in the charge sheet.

12. There is another letter in the hand of the workman which is Ex.MW1/M2. In which also he has clearly stated that in future he would not commit such mistake and he should be given pardoned for the acts of misconduct mentioned in letter dated 04.05.2011.

13. The workman while appearing in Ex. WW1 has admitted that in his cross examination that Sh. P.L.Kochar was the enquiry officer. He further admitted that letter dated 10.06.2011 Ex. WW1/M2 is correct. Similarly he has admitted letter dated 24.12.2011 Ex.WW1/M3 written by him. Both these letters as per the admission of the workman bear his signature. It is not out of place to mention here that workman herein is matriculate and situation would have been little bit different, had he been purely illiterate. There is no evidence worth the name on the record to suggest that any threat or force was used against the workman so as to compel him to admit the allegation contained in Ex. MW1/1. The workman has also not examined any independent person or official as witness so as to remotely suggest that enquiry officer has exercised any kind of influence or used force in obtaining the signature of the workman on the above documents. The above documents i.e, both the reply as well as letter dated Ex.MW1/M2 is in the hand of the workman. Therefore, in such circumstances the only conclusion which can be drawn is that workman has voluntarily signed the documents Ex.MW1/2 and WW1/2 as well as WW1/3.

14. Equally meritless is the contention of the workman that regular enquiry was required to be conducted even if the allegation made in charge sheet are admitted. It is fairly settled position in law that when a delinquent employee has admitted the allegation contained in charge sheet made against him, in that eventuality there is no need to conduct a

regular enquiry as it would be empty formality to hold any enquiry against such a delinquent workman who has admitted the allegation of misconduct made against him. I am fortified in my opinion by the ratio of the case in Vivekanand Sethi Vs. Chairman J.K. Bank Ltd. 2005 (106) FLR (207) SC where in it was absorbed as under:

> "It may be true that in a case of this nature, the principles of natural justice were required to be complied with but the same would not mean that a full-fledged departmental proceeding was required to be initiated. A limited enquiry as to whether the employee concerned had sufficient explanation for not reporting to duties after the period of leave had expired or failure on his part on being asked so to do, in our considered view, amounts to sufficient compliance of the requirements of the principles of natural justice.
>
> The principle of natural justice, it is trite, is no unruly horse. When facts are admitted, an enquiry would be an empty formality. Even the principle of estoppels will apply. See Dr. Gurjeewan Garewal (Mrs.) Vs. Dr. Dumitra Dash (Mrs.) and others. The principles of natural justice are required to be complied with having regard to the fact situation obtaining therein. It cannot be put in a strait jacket formula. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case. See State Bank of Punjab Vs. Jagir Singh and Karnataka State Road Transport Corporation and another Vs. S.G. Katurappa and another."

15. It is thus clear from the above legal position that when allegations have been admitted by the workman voluntarily, such an admission can be taken as proof of the guilt if the Tribunal is of the opinion that the admission is voluntary and inspires confidence. As discussed above, the workman is in the habit of committing various acts of insubordination as is clear from the evidence on record. As such, the Tribunal is of the opinion that there was no need to conduct regular enquiry and the enquiry proceedings conducted against the workman is fair and in accordance with principal of natural justice. Issue No. 1 is answered accordingly.

16. Now, the other vital question is whether the punishment of removal to the workman is in proportion to the misconduct committed by him. As discussed above, the workman is in the habit of committing misconduct. It is clear from the evidence on record that earlier also charge sheet in year 1996 was issued to the workman and penalty of 'censure' was imposed upon him which is clear from Annexure-A filed by the management. The workman was issued another charge sheet for misappropriation of LTC advance and penalty of one decrement was imposed vide order dated 27.03.2003, which is Annexure-B. The workman is also in the habit of remaining absent unauthorizedly and warning letters were also issued to him on 31.12.2007 and also, thereafter, on 24.11.2009 as is clear from the Annexure-C & D filed by management. Thus, in view of the overwhelming evidence of previous misconduct, this Tribunal is of the opinion that penalty of 'dismissal' is in consonance with the gravity of the offence committed by the claimant and no leniency or sympathy can be shown for the alleged grave misconduct of the workman. Both the issues, No.1 & 2, are accordingly decided against the workman and in favour of the management.

17. Since, punishment 'removal from the service' has been held to be fair and justified, as such, there is no question of reinstatement of the workman in service. Accordingly issues No. 3 is also decided against the workman and favor of the management.

18. As a sequel to my above discussion the reference is answered accordingly and it is held that punishment of removal of the workman from the service is just and fair. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : May 31, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 8 जून, 2017

का.आ. 1458.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स आर एण्ड डीसीआईएस, सेल एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, धनबाद के पंचाट (शिकायत सं. 10/2013, संदर्भ संख्या 33/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.06.2017 को प्राप्त हुआ था।

[सं. एल-43011/15/2011-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 8th June, 2017

S.O. 1458.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Comp. No. 10/2013, Ref. No. 33/2012) of the Central Government Industrial Tribunal/Labour Court-1, Dhanbad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. R & DCIS, SAIL and other and their workman, which was received by the Central Government on 01.06.2017.

[No. L-43011/15/2011-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.1), DHANBAD

IN THE MATTER OF A COMPLAINT U/S 33(A) OF I.D. ACT, 1947

COMPLAINT NO. 10/2013

(Arising out of Ref. No. 33/12)

Ministry Order No. L-43011/15/2011-IR(M)

Afroz Ahmed & Sahdeo Mahli …Complainants

Vrs

1. Executive Director
   RDCIS/ SAIL Shyamali Ranchi
2. General Manager (P)
   RDCIS/ SAIL Shyamali Ranchi
3. Chairman-cum-Managing Director
   MECON Ltd , Ranchi …Opposite party

Present : Sri Ranjan Kumar Saran, Presiding Officer

Appearances :

For complainant : None

For opposite party : Shri D.K.Verma, Advocate

State : Jharkhand Industry : Steel

Dated : 22/05/2017

AWARD

2. That this complaint is filed by the complainant and others. After receipt of the complaint, both parties are noticed. But after appearing for certain dates does not appears though management appears. Subsequently, Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 8 जून, 2017

का.आ. 1459.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स आर एण्ड डीसीआईएस, सेल एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, धनबाद के पंचाट (संदर्भ संख्या 33/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.06.2017 को प्राप्त हुआ था।

[सं. एल-43011/15/2011-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 8th June, 2017

S.O. 1459.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 33/2012) of the Central Government Industrial Tribunal/Labour Court-1, Dhanbad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. R & DCIS, SAIL and other and their workman, which was received by the Central Government on 01.06.2017.

[No. L-43011/15/2011-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947.

Reference: No. 33/2012

Employer in relation to the management of RDCIS, M/s. SAIL

AND

Their workmen

Present: Shri R.K.Saran, Presiding Officer.

Appearances :

For the Employers : Shri D.K.Verma, Advocate

For the workman : None

For the Contractor : None

State : Jharkhand Industry : Steel

Dated : 22/05/2017

AWARD

By order No. L-43011/15/2011-IR(M) dated 18/04/2012, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

"Whether the termination of services of Shri Afroz Ahmed, Mahabir Gope, James Bhengra, Sahdeo Mahli and M. Prakash Jojo all contract labour w.e.f. 31/03/2010 by the management of SAIL, RDCIS Through the contractor is legal and justified? What relief the workmen are entitled to?

2. After receipt of the reference, both parties are noticed. Both appears for certain dates and thereafter workman as well as contractor do not appear subsequently, though management appears regularly. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 8 जून, 2017

का.आ. 1460.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एयरपोर्ट अथॉरिटी ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुंबई के पंचाट (संदर्भ संख्या 23/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.06.2017 को प्राप्त हुआ था।

[सं. एल-11012/11/2005-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 8th June, 2017

S.O. 1460.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 23/2006) of the Central Government Industrial Tribunal/Labour Court-2, Mumbai now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Airport Authority of India and other and their workman, which was received by the Central Government on 07.06.2017.

[No. L-11012/11/2005-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT : M.V. DESHPANDE, Presiding Officer

REFERENCE NO.CGIT-2/23 of 2006

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

AIRPORTS AUTHORITY OF INDIA

The Dy. General Manager (Personnel)
Airports Authority of India
Terminal 1-A/1-B, Chhatrapati Shivaji
International Airport,
Mumbai-400099

AND

THEIR WORKMEN

Smt. Gangubai Puranik,
Pragati Chawl, Pawai Filter Pada,
Aarey Road, Near Nitie,
Mumbai 400 087.

APPEARANCES :

FOR THE EMPLOYER : Ms. Geeta Raju, Advocate

FOR THE WORKMEN : Mr. M. B. Anchan, Advocate

Mumbai, the 17th April, 2017

AWARD

1. The Government of India, Ministry of Labour & Employment by its Order No.L-11012/11/2005-IR (M) dated 20.04.2006 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

> *"Whether the action of the management of Airports Authority of India, Mumbai is proper and justified in terminating the services of Smt. Gangubai Puranik from the services of Airports Authority of India w.e.f. 28/2/2001? If not, what relief the workman is entitled to ?"*

2. After receipt of the reference, notices were issued to both the parties. In response to the notice, the second party workman filed her statement of claim at Ex-9. According to her, she joined the services of the Airports Authority of India, Mumbai as Safaiwala since 1985 through the contractor M/s. Abhishek Enterprises. Since then she had continuously worked without any break in service. She was regularized in service along with other casual labours in the year 1989. She was permanent worker of the Airports Authority of India, Mumbai.

3. According to her, she fell sick from 28.2.2001. She was suffering from depression. She was under the medical treatment of Dr. Arvind Patel. She had informed the office about her sickness to the Manager. She had also sent her daughter to the office for informing about her sickness. However, she was not allowed to enter the office and was sent back. However, her daughter told the security guard at the gate to inform the Manager about her sickness. Since she

did not get any reply inspite of her informing about the sickness, she visited the office and informed the Manager Mr. Sanjay about her sickness. The Manager told her that when she will be medically declared fit, then she may come to the office along with medical certificate. When she became fit, she went to the office to resume duty with medical fitness certificate dated 30.7.2001 issued by Dr. Arvind Patel. However, she was not allowed to resume the duties by the Manager and the Manager told her that her services have already been terminated on 28.2.2001 vide order dated 24.7.2001 and she was told to go back.

4. According to the concerned workman, her termination is illegal and not justified. She was requesting the Manager for reinstatement in service since there is no reply from the Manager, she made representation dated 17.9.2001 to the Manager [Personnel], Airports Authority of India, New Delhi and the Airport Director, Mumbai. She did not get any reply to her representation. Since her gate pass was taken back, she was approaching through union for the reinstatement. But since the management did not reinstate her in services, she raised the dispute with the Assistant Labour Commissioner [Central] Mumbai. Since the conciliation failed the dispute was referred for adjudication. She is therefore asking for instatement in service with full back wages and continuity of service.

5. First party management resisted statement of claim by filing the written statement (Ex.12). According to the first party management, the concerned workman had been in the habit of remaining absent without permission by of and on. She was habitual absentee. She was issued a memo dated 22.6.1999 for frequently absentee from duty unauthorisedly without prior permission wherein it was further stated that she was a chronic absentee and habitual leave taker. Further, she did not submit any reply to the said memo but reported on work on and from 23.6.1999. Subsequently, she remained absence from duty without intimation or prior permission w.e.f. 11.2.2000 and hence a telegram dated 22.2.2000 was issued directing her to report for duty immediately, failing which action as deemed fit would be taken against her. Responding to the said telegram she reported for work and resumed her duty w.e.f. 2.3.2000. However, again she unauthorisedly remained absent on and from 14.5.2000 for which the office note dated 20.7.2000 was issued by Mr. Pramod Kumar, Executive, House-keeping, her reporting officer to the Personnel Manager regarding her remaining absent without permission w.e.f. 14.5.2000. She tendered the apology admitting misconduct committed by her vide letter dated 31.7.2000 addressed to the Personnel Manager of the authority stating that she was suffering from fever & cold and as per doctor's advise for taking rest, she could not attend her duty. She further assured that in future she would not make mistake of remaining absent on duty and would try to be careful to attend the duty properly. She, however, did not submit any medical certificate in support of her contention that she was sick. She resumed on work on 11.8.2000. Though her explanation was not found satisfactory, management of the authority took the lenient view and did not initiate any disciplinary action against her.

6. According to the first party management, the concerned workman remained absent without permission. She was issued memo dated 29.9.2000. She did not give any reply but resumed her duty on and from 30.9.2000. Inspite of giving several opportunities from time to time to mend her way, she, however, did not show any improvement in her attendance and was in habit of remaining absent unauthorisedly. She remained continuously absent unauthorisedly on and from 28.2.2001 without any intimation and prior sanction of the leave as stated in the office note dated 28.6.2001 signed by the said Executive House-keeping. The Airport Director therefore issued an order dated 24.7.2001 observing that she has been remaining absent unauthorisedly w.e.f. 28.2.2001 for the period of 60 days without any intimation or prior sanction of leave and hence it was deemed that she was no longer interested in employment of the authority and voluntarily abandoned the job on her own volition. Accordingly, her name was struck off from the rolls of authority on account of abandonment of job on her own volition in terms of Clause 31(2)(vi) of the I.A.A.I. Employees (General Conditions of Services) Regulations, 1980. The period of her absence on duty was treated as unauthorized absence for all intends and purposes. Therefore, her services under circumstances were terminated w.e.f. 24.7.2001.

7. According to the first party management, at present there is no any workman on the roll of authority at CSI Airport, Mumbai as it has no operation, management etc. over there since in terms of provisions of agreement dated 4.4.2006 entered into between the Airport authority and MIAL, management of CSI Airport, Mumbai was transferred to authority of MIAL for its operation, maintenance and development w.e.f. 3.5.2006. Therefore, the concerned workman is not entitled for reinstatement with the authority at CSI Airport, Mumbai on this ground alone.

8. It is thus contention of the management that the services of concerned workman were terminated on valid, legal, proper and bonafide grounds and as such there is no question of her reinstatement in service. Management has thus sought the rejection of reference.

9. Second party workman filed rejoinder Ex.13 and reiterated that no show cause notice or charge-sheet was issued to her before terminating her service and hence her termination is illegal. She contents that her services have been terminated from 28.2.2001 by order dated 24.7.2001. Such retrospective termination of her service is illegal. It is contended that the termination is against the principles of natural justice.

10. Both the parties have adduced the evidence and filed written notes of arguments.

11. Following issues are framed at Ex.14. I reproduce the issues along with my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1.	Does first party prove that second party abandoned the job ?	Not proved
2.	Does first party prove that since she was not considered by MIAL she is not entitled for any relief ?	Not proved
3.	Is second party entitled for any relief ?	Yes
4.	What order ?	As per final order

REASONS

Issue No.1&2:-

12. So far contentions go, it seems to be the admitted position that the concerned workman was working at the airport with the contractor as contract people and her name appeared in one of the list of annexed by International Airport Authority Employees Union at page No.3, Sr. No.46. Admittedly in terms of the order dated 3.5.1991 passed by Division Bench of Hon'ble Bombay High Court in Writ Petition No. 1494 of 1989, the concerned workman along with few other contract people was paid the wages directly by the authority w.e.f. 3.5.1991 as a casual Safaiwala till absorption of her services in the authority. It seems to be the admitted position that service of the concerned workman along with contract labour was absorbed in terms of the order dated 11.4.1997 passed by the Hon'ble Supreme Court and the concerned workman was absorbed in service of the authority as a Sweeper w.e.f. 6.12.1996 by the appointment order dated 16.12.1997 pursuant to the said orders dated 6.12.1996 and 11.4.1997 passed by the Hon'ble Supreme Court. Admittedly therefore the concerned workman was a permanent workman of the Airport Authority as on the date, when her services were terminated by the management.

13. In view of that it is to be seen whether it was necessary for the management to conduct the enquiry against the workman, since admittedly no enquiry was conducted in respect of her absence on duty un-authorisedly without permission.

14. For, it is explicit from the evidence of concerned workman that she fell ill from 28.2.2001 and was under the medical treatment of Dr. Arvind Patel. She claims that she had informed to the office about her sickness and to the Manager. For that purpose she has sent her daughter to the office for informing about her sickness. However, her daughter was not allowed to enter the office and was sent back. She want on to say that she visited the office and informed the Manager Mr. Sanjay about her sickness and the Manager told her that when she would be declared medically fit then she could come to the office with medical certificate and therefore she went to office to resume the duty with medical certificate dated 30.7.2001 issued by Dr. Arvind Patel but she was not allowed to resume her duties.

15. In this respect management witness Shri Leonard Turke, Manager [HR] (Ex.23) has admitted in his cross-examination that Smt. Gangubai Puranik, concerned workman submitted application informing that she was sick. The fact remains therefore that the management was informed about the sickness of the concerned workman. The fact is explicit from the apology letter dated 31.7.2000 addressed to the Personnel Manager by the workman mentioning therein that she was suffering from fever & cold and as per doctor's advise, she was taking rest and therefore she could not attend the duty. In this letter, the concerned workman put her thumb impression and stated that she may be excused for her absentee from the duty since on the ground of illness she could not attend the duty.

16. Learned Counsel for the management submitted that in terms of Clause 31(2)(vi) of the I.A.A.I. Employees (General Conditions of Services) Regulations, 1980, if the workman remains absent unauthorisedly then it is deemed abandonment of the job by the concerned workman on her own volition. Submission is to the effect that the application of concerned workman was not accompanied with medical certificate and therefore when she was absent from 28.2.2001 for the period of more than 60 days without prior sanction of leave, her services were terminated for habitual absenteeism since she was absent for 347 days for the period from 1.1.1998 to 24.7.2001. The question is whether her absence for the said period can be treated as abandonment of her job on her own volition.

17. In my considered view the concerned employee was the permanent worker of the Airports Authority of India. Even it has come on record that she has informed to the management about her sickness and the reasons of her absence on duty. Not only that but she sent letter of apology on 31.7.2000. Even her evidence shows that she went to office

and inform to the Manager concerned about her sickness and the Manager told her that when she would be medically fit to join the duty then she could come to the office along with medical certificate and even thereafter she went to the office along with medical certificate but was not allowed to resume the duties. This sort of evidence of the concerned workman remained unshaken.

18. I say so because no enquiry was conducted by the management in this respect and even it appears that she was not given opportunity to adduce the evidence of Dr. Arvind Patel who according to the concerned workman gave treatment to her and advise the bed rest. Obviously, therefore it appears that her services have been terminated by order dated 24.7.2001 when she was sick. She was declared medically fit by the medical certificate dated 30.7.2001. Order of termination came to be passed on 24.7.2001. If concerned workman would have been given opportunity by holding enquiry to prove and to adduce evidence in respect of her sickness and to produce the medical certificate issued by Dr. Arvind Patel then it would have come on record that her services have been terminated by order dated 24.7.2001 when she was sick.

19. From the record it can be seen that the concerned workman has not abandoned her services on her own and at times she informed to the management about her sickness and even tendered apology in her application mentioning therein that she could not attend the duty on account of her sickness. It can not be said therefore that she had no intention of joining duties. Her conduct itself is eloquent to show that she intended to join the duties and therefore she had sent her daughter to inform the Manager concerned about her sickness and then she personally went to inform the Manager about her sickness who told her to come back to the office after getting medically fit along with medical certificate. In view of that it cannot be said that the concerned workman absented herself from work on her own for no good reason and even without informing about her sickness to the management. The evidence in that respect has come on record that she had informed the management about her sickness and even tendered the apology for absence on duty on account of sickness.

20. In the decision in case of Syndicate Bank, Bombay V/S. General Secretary, Syndicate Bank, Bombay AIR 2000 (SC 2198) the ratio decidendi is that employer should follow the principles of natural justice before termination. In that case the appellant was terminated from services of the bank. It was not disputed that the appellant absented himself from work for a period of 90 or more consecutive days. Appellant has no intention of joining duties. Under the circumstances, it was observed that the conduct of the employees of the bank had been astounding and therefore termination was justified.

21. In the instant case, the conduct of the concerned workman is eloquent to show that she all the way informed the management about her sickness. She had intention of joining the duties. She tendered apology and requested for allowing her to join the duties. Under the circumstances, her conduct shows that she has not voluntarily abandoned her duties. In view of that the employer ought to have followed the principles of natural justice and enquiry. Since no enquiry was held before terminating her services on the ground of her abandonment of services voluntarily, it can be said that the termination is illegal.

22. Learned Counsel for the management seeks to rely on the decision in case of Managing Director, Panchganga Sahkari Sakhar Karkhana Ltd. V/S. Babasaheb Devgonda Patil and Anr. 1994 III LLJ 679 Bombay wherein it was finding of the fact that the respondent abandoned or voluntarily relinquished service and his removal from the rolls was mere formality. In the circumstances it was held that the respondent was not entitled for reinstatement and back wages.

23. In the instant case, the facts are quite distinct and distinguishable since from the evidence it has come on record that the concerned workman informed to the management about her sickness and she had intention of joining the duties.

24. From the evidence it has come on record that the concerned workman received the memo dated 26.2.1999 and she replied the said memo. Thereafter on 23.6.1999 she resumed the duties and thereafter she was absent from duty from 11.2.2000 because she fell sick. Even it was suggested to her in her cross-examination that she resumed duty from 2.3.2000 and admittedly she resumed duty on 11.8.2000. From the evidence therefore it appears that she was willing to join the duties and even wanted to produce medical certificate but then the termination order came to be issued thereby terminating her services from 28.2.2001 vide order dated 24.7.2001. When she was declared medically fit by medical certificate dated 30.7.2001 then her services cannot be terminated by the order dated 24.7.2001 when she was sick. As such the termination is with retrospective effect and therefore it is illegal.

25. Considering all these facts, I find that the first party management has not proved that the second party workman abandoned her services voluntarily on her own volition and therefore removal of her name from the rolls is unjustified as such there was no question that she was not considered by MIAL. It cannot be said therefore that she is not entitled for any relief. First party management has not proved both these issues. The issues are therefore answered accordingly in the negative.

Issue No. 3 & 4

26. In view of my findings to Issue Nos. 1 & 2, it will have to be held that the termination of services of the concerned workman is illegal and against the principles of natural justice since no any enquiry was held nor the notice was issued to her before terminating her service. It can be said that the employer has not followed the principles of natural justice before termination. As such the termination of the concerned workman is illegal and invalid. She is therefore entitled for reinstatement in service will full back wages and continuity of service. The above issues are therefore answered accordingly. Thus the order:

ORDER

(I) The action of the management of Airports Authority of India, Mumbai in terminating the services of concerned workman is held illegal and invalid.

(II) Concerned workman be reinstated in service along with full back wages and continuity of service.

Date: 17/04/2017

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 8 जून, 2017

का.आ. 1461.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारत पेट्रोलियम कार्पोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुंबई के पंचाट (संदर्भ संख्या 51/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.06.2017 को प्राप्त हुआ था।

[सं. एल-30011/41/2009-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 8th June, 2017

S.O. 1461.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 51/2010) of the Central Government Industrial Tribunal/Labour Court-2, Mumbai now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Bharat Petroleum Corporation Ltd. and their workman, which was received by the Central Government on 07.06.2017.

[No. L-30011/41/2009-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT : M.V. DESHPANDE, Presiding Officer

REFERENCE NO.CGIT-2/51 of 2010

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

BHARAT PETROLEUM CORPORATION LTD.

The General Manager (HR)
Bharat Petroleum Corporation Ltd.
[Refinery],
Mahul,
Chembur, Mumbai.

AND

THEIR WORKMEN

The General Secretary,
Petroleum Workmen's Union,
C/o. C-3, Rashmi Complex,
Near Mental Hospital
Thane 400 604

APPEARANCES :

FOR THE EMPLOYER : Shri R.S. Pai, Advocate

FOR THE WORKMEN : Ms. Kunda Samant, Advocate

Mumbai, dated the 19th April, 2017

AWARD

1. The Government of India, Ministry of Labour & Employment by its Order No.L-30011/41/2009-IR (M) dated 05.05.2010 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the management depriving the benefit of lease rent and maintenance charges or HRA to Smt. Kranti K. Waradkar, Female Nurse is legal and justified ? What relief she is entitled to ?"

2. After receipt of the reference, notices were issued to both the parties. In response to the notice, the second party workman filed her statement of claim at Ex-8.

3. It is admitted that the first party is a government company under section 617 of Companies Act. The first party management is engaged in the business of refining crude oil and manufacture and distribution of Petroleum Products. It is uncontroverted that the second party union is a registered union for Mumbai Refinery and it represents clerical category of employees. The concerned workman Smt. Kranti K. Waradkar was employed as Female Nurse at Medical Centre, Mahul. She was confirmed by letter dated 29.7.1998 w.e.f. 1.8.1998. She has been working as Assistant-I Medical Services.

4. According to second party union, the concerned workman was getting House Rent Allowances in accordance with First Party's Rules and also in terms of settlement entered into between the first party and second party representing her. She is entitled to HRA during her service tenure with the first party management, right, vested in her under the letter of appointment. The concerned workman got married on 31.12.1991 at Mumbai. She was staying with her husband and his family at A-1/16, Dyaneshwar Nagar, D.G. Mahajan Road, Seweri-Wadala, Mumbai – 400 031. However, due to accommodation problem in the joint family, her husband and she thought of buying a separate flat which was booked on 11.7.1992 and was occupied on 10.5.1995 in her name at Bright Star Co.op. Society, Balkum, Thane. She was granted housing loan for the same by the first party management.

5. According to the union, the concerned workman's elder daughter by name Kumari Darpana Kiran Waradkar is born on 3.12.1992. There was no school bus facility in the school by name Bedekar School, Thane and therefore she applied for her admission for nursery in King George School, Dadar Hindu Colony and obtained admission for her on 2.5.1995. It was therefore decided by her and husband that she would stay in the said flat for all working days and they would join her on Sundays, holidays and vice-versa. Her mother-in-law was aged and hence she needed somebody with her. Hence her husband preferred to be with his mother.

6. It seems to be admitted position that the Corporation introduced a scheme known as Self Lease Scheme in 1995. As per the said scheme employees owning their own flat were eligible to apply under the Self Lease Scheme subject to satisfying all the conditions therein. The workman concerned was required to forgo her right to receive HRA during the continuance of the receipt of self lease rent and maintenance charges under the Self Lease Scheme. The Corporation and the workman entered into Self Lease Agreement on 10.5.1996. As per the said Self Lease agreement the workman leased under Self Lease Scheme her flat situated in Bright Star Co.op. Society, Balkum, Thane. In terms of the said agreement, the workman is entitled only for self lease rent and maintenance charges subject to condition that she occupy the flat leased under the Self Lease agreement.

7. According to the union, the concerned workman stayed in the said flat and at no point of time she had violated any terms. She had paid regularly electricity charges in respect of said flat. She obtained permission from the Secretary of the housing society for alteration of her flat. She stayed in the flat for 5 days in a week and used to stay in mother-in-law's house at Seweri on holidays and vice-versa. However, all of sudden she received a letter dated 1.8.2001 whereby it was alleged that she was not occupying the said flat leased out to the first party management pursuant to the agreement entered between them and thereafter the first party management without giving any opportunity to her has passed an order informing her that documents filed by her were not acceptable to it and the first party management came to the conclusion that she was not occupying the said flat. The first party management ordered

the recovery of amount paid to her from 1.10.1995 to 31.7.2001 amounting to Rs.2,13,549/- towards lease rent and maintenance charges. It is thus contention of the union that the order of the first party management that recovery of lease rent and maintenance charges from the concerned workman was totally illegal and unjustified. The concerned workman therefore gave notice to the first party management on 12.9.2002 asking it to remit the amount of Rs.2,13,549/- recovered from her along with interest. The first party management replied the said notice mentioning therein that the flat given on lease was not occupied by the concerned workman and when the team of the officers of first party management visited the flat, the same was found locked. So according to the second party union, the concerned workman is deprived of HRA or benefits of the lease rent and maintenance charges under the lease agreement from 1.10.1995 to July 2001 and therefore she is asking for the amount of Rs.2,13,549/- as lease rent recovery plus maintenance charges alternatively Rs.2,28,695/- as amount towards HRA from 1.10.1995 to 31.7.2001 along with interest @ 18% per annum.

8. First party management resisted statement of claim by filing the written statement (Ex.9). It is the contention of the first party management that the concerned workman had already filed an application under section 33 (c) (2) of the I.D. Act, 1947 being application (IDA) No. LC 02/90 of 2003 before this tribunal and the application came to be rejected as the said claim made by the workman came to be rejected by the court by its order dated 8.5.2008 and therefore reference for the same claim and relief at the instance of union is not maintainable. Reference is barred by principle of resjudicata.

9. It is then contention of the first party management that in terms of the said self lease agreement, the concerned workman was entitled for self lease rent on condition that she occupies the flat leased out to the management. Corporation found that the workman was not occupying the flat leased out in terms of self lease agreement and therefore vide letter dated 7.8.2001 concerned workman was informed by the Corporation that she was not entitled for the benefits of self lease rent in terms of the said agreement. Her claim for self lease rent was rejected and the amount paid to her towards self lease rent was to be recovered from her.

10. It is denied by the first party management that electricity charges in respect of said flat and other expenses were paid by the concerned workman on account of her occupation of the said flat. First party management has thus denied the contentions of the concerned workman that she was staying in the flat for 5 days a week. It is thus denied that the concerned workman was not given opportunity of hearing before passing an order dated 14.12.2001. It is thus denied that the concerned workman is entitled to receive the amount of Rs.2,13,549/- being self lease rent and maintenance charges or an amount of Rs. Rs.2,28,695/- by way of HRA. It has thus sought rejection of the reference.

11. Second party union has filed rejoinder Ex.12 and reiterated that no enquiry was conducted before recovery of the self lease rent and maintenance charges. It is also reiterated that the concerned workman was occupying the said flat. It is contention of the second party union that the tribunal did not give judgment on merits in respect of the said issue and therefore the reference is not barred by principles of resjudicata and as such reference is maintainable.

12. Second party union has adduced the evidence of concerned workman Shri Kiran Waradkar, husband of the concerned workman, Shri Pandurang Tikam and Shri Sudhir Tari. Corporation has adduced the evidence of Shri Abhay Nadkarni and closed the evidence.

13. I have heard the arguments of both the parties. Second party union has filed written notes of arguments Ex.83. First party management has filed written notes of arguments Ex.84.

14. Following issues are framed at Ex.13. I reproduce the issues along with my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1.	Whether the action of management depriving the second party the benefit of lease rent and maintenance charges or HRA to Smt. Kranti K. Waradkar, Female Nurse is legal and justified ?	Yes
2.	If not, whether she is entitled to get the said charges from the management ?	No
3.	What relief the second party worker is entitled to ?	As per final order
4.	What order ?	As per final order

REASONS

Issues Nos. 1 & 2

15. So far contentions go, it is admitted position that the concerned workman entered into agreement with the Corporation being Self Lease Agreement dated 10.5.1996 and in terms of the said agreement the concerned workman was entitled for self lease rent on condition that she occupies the flat leased out to the management. It is undisputed that the first party management has issued letter dated 1.8.2001 to the concerned workman informing that she has not been occupying the self lease flat and the concerned workman was asked to explain why the self lease rent and maintenance charges should not be recovered from her. Ultimately, the first party management has passed an order and recovered the self lease rent and maintenance charges from the concerned workman amounting to Rs.2,39,549/-. The question is whether the concerned workman has been occupying the self lease flat or whether there is breach of agreement ?

16. In this respect if we see the evidence of concerned workman she states that she was occupying the said flat in view of self lease agreement for 5 days in a week and her husband used to stay with his mother at their residence at Seweri. But then it is clear from her evidence that her daughter was admitted in King George School and therefore the fact remains that her daughter was also staying at the flat at Sewri. Therefore it seems improbable that the concerned workman was alone occupying the flat which was leased out to the Corporation keeping her other family members away from her especially when her daughter was required to reside at Seweri since she got admission in the school namely King George School.

17. That apart the evidence has come on record that the enquiry was made with the occupants residing in the neighboring flat being flat No. B-2/G-1 to verify whether the concerned workman resides in the said flat or not. The said enquiry was made by J D'souza and the witness of the management Shri Abhay Nadkarni. It is clear from the evidence that when they made enquiry with the occupants residing in the neighboring flat. It was informed to them that the concerned workman is not residing in the said flat leased out to the Corporation and on rare occasions her family members used to come to the said flat. Accordingly, they confirmed that the concerned workman does not reside in the said flat and then they submitted a joint report dated 6.8.2001 to the then Senior Staff Manager vide Ex.79 mentioning therein that on enquiry it was found that the concerned workman was not occupying the flat leased out to the Corporation but was getting the self lease rent by violating the terms of agreement. This is precisely the evidence of Shri Abhay Nadkarni which has gone un-challenged, even though the attempt is made to suggest that he even did not make enquiry with the neighbours and that did not obtain anything in writing from those neighbours to show that the concerned workman was not occupying the said flat leased out to the Corporation.

18. It is nodoubt true that the concerned workman relies on the documents i.e. allotment letter Ex.30, occupancy certificate Ex.31, NOC of the builder Ex.34, bills of payment receipt in respect of work of fabrication Ex.37 [collectively], pass book of her bank account Ex.38, electricity bill Ex.39, receipts of the maintenance charges Ex.40 [collectively], transfer receipts of the gas connection Ex.41 [collectively] to show that she was occupying the said flat leased out to the Corporation. All these documents pertain to the ownership of the said flat of the concerned workman. That would show that she being the owner of the said flat. She made some repairs of the said flat and at times she had complained to the Secretary of the society in respect of neighbours and others. That does not show that she along with her family members were occupying the said flat. In terms of the self lease agreement infact she admits that her husband, mother-in-law, daughter were residing at Seweri flat and she occasionally used to come to the said flat which was leased out to the Corporation. The fact remains that the enquiry was made by the offices of the Corporation and that time it was found that the concerned workman was not occupying the flat leased out to the Corporation but on rare occasion she used to come to see the flat.

19. This is precisely the evidence of her husband who admits in his cross examination that after marriage, concerned workman was residing at Seweri. He even admits in his cross examination that her daughter was admitted in the school at Dadar. He even admits that when the officers of the Corporation had gone for inspection to the flat at Thane, the flat was locked. Even the witness of the concerned workman namely Shri Sudhir Tari has admitted in his cross examination that the family of the concerned workman was staying at Seweri and her both the daughters were studying in King George School at Dadar. He admits that he has never seen her daughters in the flat at Thane for the period from Monday to Friday. Meaning thereby that the daughters and the husband of the concerned workman were not residing in the flat leased out to the Corporation. That shows that she was not occupying the flat and when officers of the Corporation went to make an enquiry, they also found that the said flat leased out to the Corporation was locked.

20. Even it is made clear from the evidence of Shri Sudhir Tari that the officers of the company had come to the society and enquired with the occupants. He admits in his cross examination that the officers of the company namely J D'souza and Shri Abhay Nadkarni had come to the society and enquired with the occupants of the society. From the evidence it can be gathered that the concerned workman was not occupying the flat leased out to the Corporation and it amounted to breach of self lease agreement. In view of that after giving notice to the concerned workman the order

came to be passed in respect of the recovery of the self lease rent paid to her. It cannot be said therefore that the action of the management of recovering self lease rent amount from the concerned workman is illegal.

21. As a matter of fact, it is clear that the concerned workman had filed application under section 33 (c) (2) of the I.D. Act, 1947 being application (IDA) No. LC 02/90 of 2003 before this tribunal. On going through the copy of judgment at Ex.29, it is clear that the application came to be rejected with no order as to costs with the specific findings that the applicant is not entitled to recover Rs.2,39,549/- from the opponent i.e. Corporation. By this application, the concerned workman prays for recovery of Rs.2,39,549/- recovered from her and which was given to her under the self lease rent scheme. Her claim was rejected on the ground that she does not have existing right since the existing right is disputed by the order of management and the said order dated 14.12.2001 subsist and has not been challenged by the applicant before any forum. It is thus finding of the fact that the applicant is not entitled to recover Rs. 2,39,549/- from the opponent i.e. Corporation. That finding holds good to held that the action of the management depriving the second party workman the benefit of lease rent and maintenance charges is legal and justified.

22. Herein in the instant case alternatively the union is asking for HRA. In her application the concerned workman's claim was in respect of amount which was paid to her under the said lease agreement during the period from 1.10.1995 to 31.7.2001 in lieu of HRA. That claim was rejected and the union has raised the same relief in this reference which was earlier claimed by the concerned workman and was rejected by this tribunal. In view of that also the second party union is not entitled to the reliefs claimed.

23. In this respect the Learned Counsel for the first party management submitted that the union is not entitled to raise the industrial disputes on the subject matter of the lease agreement or for recovery of lease rent and maintenance charges since the findings of the tribunal in its award dated 12.10.2006 in reference CGIT No.2 of 55/2002 is binding on all workmen and union of the first party management under section 18 of the I.D. Act, 1947. In that reference in para 17 of the judgment it was held that

> "If we consider all this, from all angles coupled with specific case made out by the 1st party that since it was a welfare scheme and which was a discretionary withdrawal of it by the 1st party, does not attract Section 9(a) of the Industrial Disputes Act, 1947. It does not attract Section 9(A) of the Industrial Disputes Act, 1947. When it does not attract Section 9(A) of the Industrial Disputes Act, 1947 the 1st party has right to make such change which cannot be the subject matter of the Industrial dispute and fall under Section 2 (k) of the Industrial Disputes Act, 1947. As a result of that, members of all the 2nd Party's Unions are not entitled to get 40% rent and 45% maintenance for even which they were getting at the desire of the 1st Party, prior to 14th December, 2001. Accordingly I answer this issue to that erect".

24. In the present case also the order of the management has not been challenged. The said order is in consonance with the self lease scheme. It is within the managerial directions of the employer to organize and arrange his business in the manner he considers best and therefore also the concerned workman is not entitled to any reliefs as prayed.

25. In view of findings to Issue No.1 & 2, I find that the concerned workman is not entitled to get lease rent and maintenance charges or HRA from the management. The above issues are therefore answered accordingly as indicated against each of them.

Issues Nos. 3 & 4

26. In view of my findings to the above issues, the second party workman is not entitled to any relief. The reference is liable to be rejected. Thus the order:

ORDER

The reference is rejected with no order as to costs.

Date: 19/04/2017

M. V. DESHPANDE, Presiding Officer

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